18378

(18,790.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 562.

WILLIAM C. GIBSON, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 23, 1903.

1 In the Court of Claims.

WILLIAM C. GIBSON
v.
THE UNITED STATES. } No. 22864.

I.—*Original Petition. Filed May* 12, 1902.

II.—*Amended Petition. Filed November* 3, 1902.

To the honorable the Court of Claims:

The claimant, William C. Gibson, respectfully represents:

I.

The claimant was on and prior to the 23d day of July, in the year 1900, a captain in the line of the Navy of the United States, and had served in the navy during the civil war and during his entire service had a creditable record.

II.

From January 22, 1900, to July 3, 1900, he was, by regular assignment, on sea duty as commanding officer of the U. S. S. *Texas.*

Under sections 1578 and 1585, Revised Statutes, all officers while at sea or attached to sea-going vessels are entitled to one ration or commutation therefor at the rate of thirty cents a day. Claimant did not receive any ration or commutation therefor while at sea or attached to a sea-going vessel as above set forth and claims commutation at the rate of thirty cents a day from January 22, 1900, to July 3, 1900, inclusive, the same amounting to forty-eight dollars and ninety cents ($48.90).

2 III.

On said 23d day of July, in the year 1900, having attained the age of 62 years, he was by virtue of the provision of section 1444 of the Revised Statutes, retired from active service, and by virtue of the provision of section 11 of the act "to reorganize and increase the efficiency of the personnel of the Navy and Marine Corps of the United States," approved March 3, 1899, and commonly known as the navy personnel act, he was retired with the rank of the next higher grade, being that of rear admiral, which rank and grade he now holds on the retired list.

By the provision of the same section 11, he thereupon became entitled to three-fourths of the sea pay of rear admiral, which sea pay is, by virtue of section 13 of said navy personnel act and of section 1466 of the Revised Statutes of the United States, the same as that of major general in the army.

By section 1261 of the Revised Statutes of the United States, a major general in the army is entitled to pay at the rate of $7,500 a

year; therefore the claimant became entitled, upon retirement with the rank of rear admiral, to three-fourths of that sum, amounting to $5,625 a year. Instead thereof, however, he is receiving pay only at the rate of three-fourths the pay of a brigadier general, $5,500 a year, amounting to $4,125 a year, thus leaving due to him a difference of pay at the rate of $1,500 a year. This difference for the period since his retirement—July 23, 1900, to October 31, 1902, amounts to three thousand, four hundred and four dollars and nineteen cents ($3,404.19).

No other action than as aforesaid has been had on this claim in Congress or by any of the departments.

The claimant is the sole owner of this claim and the only person interested therein; and no assignment or transfer of this claim, or of any part thereof or interest therein, has been made.

The claimant is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets. The claimant is a citizen of the United States, and has at all times borne true allegiance to the Government thereof, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government; and the claimant believes the facts as stated in this petition to be true. And the claimant claims three thousand, four hundred and fifty-three dollars and nine cents ($3,453.09).

GEORGE A. & WM. B. KING,
Attorneys for Claimant.

3 DISTRICT OF COLUMBIA, *ss*:

George A. King, being duly sworn, deposes and says: I am one of the attorneys for the claimant in this case, I have read the above petition, and the matters therein stated are true, to the best of my knowledge and belief.

GEORGE A. KING.

Subscribed and sworn to before me this 3d day of November, 1902.

MARIE A. SEARLES,
[SEAL.] *Notary Public.*

4 III.—*General Traverse. Filed November* 12, 1902.

And now comes the Attorney General, on behalf of the United States, and answering the amended petition of the claimant herein, denies each and every allegation therein contained and asks judgment that the said amended petition be dismissed.

L. A. PRADT,
Assistant Attorney General.

5 IV.—*Findings of Fact, Conclusion of Law, and Opinion.*

In the Court of Claims.

(Decided January 19, 1903.)

WILLIAM C. GIBSON
v.
THE UNITED STATES. } No. 22864.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following findings of fact:

I.

The claimant, William C. Gibson, was duly appointed a captain in the navy, to rank from February 18, 1900. While serving in that grade, then being an officer of the navy, with a creditable record, who served during the civil war, he was retired by the following order:

"NAVY DEPARTMENT,
WASHINGTON, *June* 30, 1900.

SIR: On July 23, 1900, you will regard yourself transferred to the retired list of officers of the U. S. Navy, in accordance with the provisions of section 1444 of the Revised Statutes, and with the rank and three-fourths of the sea pay of the next higher grade, *i. e.*, rear admiral, in accordance with the provisions of section 11 of the naval personnel act, approved March 3, 1899.

Respectfully, JOHN D. LONG, *Secretary.*

Captain William C. Gibson, U. S. Navy, commanding U. S. S. Texas."

II.

Since his retirement he has received pay at the rate of four thousand one hundred and twenty-five dollars ($4,125) a year, being three-fourths of five thousand five hundred dollars ($5,500), the pay fixed by section 1261 of the Revised Statutes of the United
6 States as that of a brigadier general in the army.

If paid at the rate fixed by said section 1261 for a major general in the army, he would receive pay at the rate of three-fourths of seven thousand five hundred dollars a year, being five thousand six hundred and twenty-five dollars ($5,625) a year, a difference over and above what he has been receiving of one thousand five hundred dollars ($1,500) a year.

III.

From January 22, 1900, to July 3, 1900, inclusive, claimant was, by regular assignment, in command of the U. S. S. Texas, a seagoing vessel in commission. During that period he was, prior to

the 18th of February, a commander in receipt of pay at the rate of four thousand dollars ($4,000) a year, and from and after that date, a captain receiving pay at the rate of four thousand five hundred dollars ($4,500) a year. He did not, while so attached to and in command of said vessel, receive any sea ration or commutation therefor, under Revised Statutes sections 1578 and 1585 (reply of Navy Department, not printed).

The commutation therefor at the rate of thirty cents per day would amount to forty-eight dollars and ninety cents ($48.90).

Conclusion of Law.

From the foregoing findings of fact, the court decides as a conclusion of law, that the petition be dismissed for the reasons stated as to the second finding in the opinion in the case of John Lowe, No. 22626, and as to the third finding in the opinion in the case of Charles M. Thomas, No. 22671.

7 The opinion in the Lowe case and that portion of the Thomas case relating to the issues involved herein, are made a portion of the record in this cause as follows:

Opinion of the Court in the Case of Lowe v. The United States, No. 22626.

The court has considered, in connection with this case, the case of Gibson, No. 22864. The claimant, a captain in the navy, with a creditable record, and who had served during the civil war, was retired on the following order:

"NAVY DEPARTMENT,
"WASHINGTON, *December* 8, 1900.

"SIR: On December 11, 1900, you will regard yourself transferred to the retired list of officers of the United States Navy, in accordance with the provisions of section 1444 of the Revised Statutes, and with the rank and three-fourths of the sea pay of the next higher grade, *i. e.*, rear admiral, in accordance with the provisions of section 11 of the navy personnel act, approved March 3, 1899.

"Respectfully, JOHN D. LONG, *Secretary.*

"Capt. John Lowe, U. S. Navy, Pope Tube Company, Hartford, Conn."

Since such retirement the claimant has received pay at the rate of $4,125, being three-fourths of $5,500, the pay fixed by section 1261, of the Revised Statutes as the pay of a brigadier general in the army. If paid at the rate of a major general in the army, he would have received pay at the rate of three-fourths of $7,500 a year, being $5,625 a year, a difference of $1,500, a year above what he has been receiving as above stated.

This suit was brought to recover the difference between the pay of a brigadier general in the army and that of a major general.

Section 1444, Revised Statutes, is as follows: "When an officer below the rank of a vice-admiral is 62 years old he shall, except in the case provided in the next section, be retired from the active service."

Section 11 of the navy personnel act is as follows: "That any officer of the navy with a creditable record, who served during the civil war, shall, when retired, be retired with the rank and three-fourths sea pay of the next higher grade." (30 Stat. L., 1007.)

Section 13 of the naval personnel act (30 Stat. L., p. 1007) provides as follows:

"That after June 30, 1899, commissioned officers of the line of the navy and of the medical and pay corps shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the army."

The first proviso in section 7 of the naval personnel act (30 Stat. L., p. 1005) is as follows:

"That each rear admiral embraced in the nine lower numbers of that grade shall receive the same pay and allowances as are now allowed a brigadier general in the army."

It is insisted by claimant that being a rear admiral on the retired list he ranks with a major general in the army, and therefore entitled to the same pay.

8 The question is therefore presented as to whether a captain in the navy when retired as a rear admiral, under the provisions of section 1444, Revised Statutes, and section 11 of the naval personnel act, shall receive the pay of a major general or that of a brigadier general.

It is contended by the defendants, that when the claimant was promoted to the next higher grade, to wit, rear admiral, that he became in legal effect a part of the nine lower number of the eighteen rear admirals provided for by the provisions of section 7, as quoted above.

The contention is, therefore, to be determined by the decision of the question as to which class he legally belongs. If by operation of his retirement he passes into and becomes a part of the higher number, his contention as to the pay of a major general is well founded; but if in legal effect he became a part of the lower number, he is entitled to the pay of a brigadier general, and is therefore not entitled to recover in this proceeding, having been paid at that rate.

It is said by the Comptroller of the Treasury (vol. 7, p. 164), "The naval personnel act abolished the grade of commodore and practically substituted a new grade for pay purposes within the grade of rear admiral, known as the nine lower numbers of that grade, and into this subgrade commodores were advanced."

This presents the real issue in this proceeding, and if that construction be correct, then the claimant has been paid all he is entitled to, and is therefore not entitled to recover.

It is insisted by counsel for claimant in the Gibson case—a like case, that the fact that sections 8, and 9, of the personnel act retained for purposes of pay certain officers of the rank of commodore, which

corresponds to that of brigadier, without any express provision of retirement in the next higher grade above that of captain, is an indication of a legislative intent to place the claimant, retired under section 11, of said act, in the rank or grade of a rear admiral having pay of the higher number; that without qualification the retirement of the claimant was to the full pay of a rear admiral without diminution incident to the numbers in the list of admirals.

In support of the theory of the plaintiff's right to recover, our attention has been cited, in the case of Gibson, argued in connection with this case, to the decision of the Supreme Court in the case of *Rodgers v. The United States* (185 U. S., p. 83), affirming the decision of this court in 33 C. Cls. R., p. 266, in which the Supreme Court says:

"Prior to the act of March 3, 1899, the corresponding ranks of officers of the navy and the army were rear admiral and major general, commodore and brigadier general, captain and colonel. By that act the rank of commodore was abolished, although that of brigadier general was undisturbed. No change was made in the relative rank of captain and colonel, or of rear admiral and major general, but the legislation left one rank in the army to which there was no corresponding rank in the navy. The statute in effect li ted the rank in the navy which was corresponding to that of brigadier general in the army to that of rear admiral, and corresponding with that of major general in the army."

It is contended that this definition of the relative rank between the officers of the army and navy tends to strengthen the claims of the plaintiff.

The decision settles the rank of the claimant, but that does not settle the question in issue in the case.

9 It is said in that connection, that there is no exception in the terms of the law which justifies the claimant being placed on the lower basis of pay, but in reply to that it may be said that there is no provision of the law placing him on the higher basis, the pay of an admiral.

The statute has made a distinction in pay of the admirals on the active list by a classification by numbers, and upon that classification has based the emoluments of the rank, and when the claimant is placed in the rank, he confronts two conditions, which may from the pay be called the higher and lower number.

It is ably argued by the counsel in the case of Gibson, No. 22864, and in this case, that there is no room for construction of the act upon which the claimants' right is based; that the words of the law are plain and unambiguous, and therefore it is the duty of the court to enforce the statute by the application of its terms and language. Many authorities are cited so sustain the theory, that where the words are plain and unambiguous there is no room for construction or interpretation; and therefore the simple duty of the court is to apply the law as by its terms it has been enacted by the legislature. It is said in substance that section 11, does not provide that a captain who has served during the civil war upon retiring with the rank of a rear admiral shall receive less than the rank of a rear admiral, and that the classification of higher or lower numbers is

intended for the active list of the navy, and has no application to the claimant, he being on the retired list; that if it had been the intention of Congress that the claimant was to receive the pay of a brigadier general, it would have been so provided in the statute, and that in the absence of any such provision the statute must be interpreted, not from conditions existing in the retired list, but from the words of the law. In support of the theory that where the real meaning of the statute is plain and there is no room for ambiguity, it is the duty of the court to enforce it according to its very language.

Our attention has been cited to the cases of *Lake County v. The United States* (130 U. S., 662, 663); *United States v. Tyler* (105 U. S., 244); *Thornley v. The United States* (173 U. S., 310); *Queen v. Poor Law Commission* (6 Adolph and Ellis, 66); *County Seat of Linn County* (15 Kansas, 501), and other cases, establishing the well-settled doctrine that statutes are to be applied and not construed when no doubt arises from the words and provisions of the law. We have carefully examined the cases relied on by counsel in both cases; but do not find that they settle the controversy arising upon the words and terms of the various statutes in relation to the subject-matter of this proceeding, as contended by claimants.

In the construction of the thirteenth section of the personnel act, and the section of said act which makes a distinction in the pay of rear admirals dependent upon their grade in numbers, we are dealing with a condition arising from the proviso making such distinctions, and must deal with that condition in the most reasonable way in determining the will of the legislature. The two sections taken together require construction and interpretation, and we are not confined to the application of the mere words of the statute. Where the words are plain and unambiguous the duty of the court is to apply the plain words of the statute; but when the subject-matter of the law is somewhat variable, then it is the duty of the court to so interpret or apply the words of the law as is most reasonable and just to such conditions, and thereby effectuate the intent of the legislature. Upon the transfer of the claimant to the retired list of the navy, by operation of law he succeeded to the next highest rank as a rear admiral it is true, but in that rank we find a classification as to pay; that classification has a higher and lower grade of pay, one-half receiving the sum of $7,500 and the other half the sum of $5,500. The question in this case is not a question of rank but of pay, and the next highest pay to a captain (the rank of commodore being abolished by the personnel act) is that of an admiral in the lower number of the list of admirals.

As has been said, this is a question of pay and not of rank in the active list of the navy, and we find a classification of admirals as to pay, the higher numbers receiving the larger pay and the lower numbers the smaller pay. The intent of the personnel act as shown by the words of the statute was to promote the claimant to the corresponding rank in the army, but the rank in the navy corresponding to the rank in the army has two grades of pay, depending on the number which is held by the respective officers, thereby estab-

lishing a variety in the condition of pay. Promotion unless otherwise ordered is by regular gradation, and each step is presumed to be taken unless otherwise provided. Applying that rule to the case of the claimant, his first step being promotion of pay would be into that grade having a lower rate of pay, and not into the grade having the right of higher pay.

The main object of the act of March 3, 1899, in dealing with the rights of the claimant was promotion for the purpose of pay, and not of rank; and the qualifications on that promotion "with rank and three-fourths sea pay of the next higher grade, *i. e.*, rear admiral," as stated in the order, following the substance of the statute, must mean the pay of a brigadier general, that pay corresponding with the pay of the nine lower numbers on the active list.

Pay and not rank being the paramount purpose of the law, we must regard the grades of pay which we find incident to the active list of the navy, and at the threshold of those grades looking at and for the "next higher" we find as the lowest grade of pay the pay of a brigadier general, and keeping in view the idea of it being a question of pay, we must adopt as the "next higher" the lower grade of pay.

In support of this theory of the law the case of Rodgers, *supra*, may be cited, in which it is said in the opinion of the Court of Claims (36 C. Cls. R., 275): "That for the purpose of pay a distinction is created by the act (R. S., sec. 1366) in the grade of rear admiral and special provision therefor."

In affirmation of the decision of this court the Supreme Court says:

"The individuals thus raised in rank were not so raised on account of distinguished services or for any personal reason, but simply in consequence of the abolition of the official rank they had held. Is it unreasonable to believe that Congress thought it unwise to give to those officers (who had neither by length of service or by personal distinction become entitled to the position of rear admiral, as it had stood in the past) all the benefits of such position? Would it be unnatural for Congress to bear in mind those who, by length of service or by personal distinction, had already earned the position, and provide that in, at least, the matter of pay there should be some recognition of the fact? Again, is it unreasonable to believe
that Congress intended that those officers whose past services
11 placed them according to the prior relative rank side by side with brigadier generals of the army should not, by a mere change of statute, be given a benefit in salary which was not at the same time accorded to brigadier generals in the army? May not this explain its action in so dividing the rear admirals into two classes—one composed substantially of former rear admirals, equal both in rank and pay with major generals in the army, and the other of those who in the past were only commodores, to whom was given the rank of rear admirals but the pay of brigadier generals in the army?"

It is the conclusion of the court that the claimant, for the purpose of pay, falls within the lower numbers of the rear admirals having

the pay of a brigadier general in the army and having been paid at that rate, the petition is therefore dismissed.

Extract from Opinion of the Court in the Case of Charles M. Thomas v. The United States, No. 22671.

6. The claim for commutation of sea ration under Revised Statutes, sections 1578 and 1585, while attached to a sea-going vessel, is claimed as additional to the allowances provided for by section 13, act of March 3, 1899. Those sections are:

"SEC. 1578. All officers shall be entitled to one ration, or to commutation therefor, while at sea or attached to a sea-going vessel."

"SEC. 1585. Thirty cents shall in all cases be deemed the commutation price of the navy ration."

Prior to the passage of the act of March 3, 1899, all officers of the navy "while at sea or attached to a sea-going vessel," were entitled to the ration or the commutation price therefor.

The defendant's contention is that by the provision of section 13 those sections of the Revised Statutes are repealed by necessary implication. The provision of section 13 relied upon is: "That, after June thirtieth, eighteen hundred and ninety-nine, commissioned officers of the line of the navy and of the medical and pay corps shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the Army."

The first and obvious rule of construction invoked by the claimant is that repeals by implication are not favored, and that if the provisions of said sections 1578 and 1585 are not repugnant to said section 13 the statutes should be construed together and effect be given to each.

Counsel on both sides have ably presented their views and cited numerous authorities in support of their respective contentions. The question is one purely of construction, if construction be allowable under the phraseology of the section.

From the increase in the pay of officers of the navy, as shown by the act of March 3, 1899, the court must assume either that there was some complaint, founded in justice, on the part of the officers of the navy because their pay and allowances were less than officers of corresponding rank in the army, or that the Congress, recognizing such inequality, sought to right it. The result was the passage of the act of 1899, by the express provisions of which the officers of the navy therein classified are given "the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the army."

12 The question is, What did the Congress mean by the language used? The claimant's contention is: "That the granting of the same pay and allowances operates as a repeal of the old navy pay and allowances only where the possession of the old navy pay and allowances is inconsistent with the receipt of the army pay and allowances." They concede that "in granting army pay there is an implied repeal of the navy pay, because there is an inconsistency

between the receipt of both army and navy pay." And further that "the granting of army mileage repealed the navy mileage." But they say "the sea ration is an allowance which is not inconsistent with army allowances, an allowance for which no substitute is offered by the grant of army allowances," and which is "peculiarly appropriate to naval service for which there cannot be an army equivalent."

The act then, it is conceded and rightly so, operates to repeal by implication the prior acts granting pay and mileage to naval officers; and in addition thereto the act of 1899 grants to naval officers the army allowances for quarters and fuel when on shore, an allowance not theretofore granted to naval officers.

Therefore, in these respects it may fairly be said that the inequality in compensation theretofore existing between officers of the army and navy were corrected by the act of 1899. That is to say, they are given the "same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the army."

Thus officers of the navy were not only given the same pay and allowances (except forage) to which officers of the army were entitled at the time the act was passed, but the act contains a provision making future legislation, in respect to such pay and allowances, applicable to naval officers, thereby indicating the purpose of the Congress to maintain the policy of equality thus established.

The only allowance excepted is for forage, while the only exception in pay is, as set forth in the first proviso, "that such officers, when on shore, shall receive * * * fifteen per centum less pay."

Another significant provision in the section, however, is the last proviso, which reads:

"*And provided further*, That no provision of this act shall operate to reduce the present pay of any commissioned officer now in the navy; and in any case in which the pay of such an officer would otherwise be reduced he shall continue to receive pay according to existing law."

That proviso, though by its term applicable to the whole act, excepts from the purview of section 13 those commissioned officers of the navy whose pay would thereby be reduced, and provides that as to them they "shall continue to receive pay according to existing law." And that such officers then in the service, who might thereafter be promoted, should continue to receive the benefit of that provision, the Congress, by the naval appropriation act June 7, 1900 (31 Stats. L., 684–697), provides that "section thirteen of the act approved March third, eighteen hundred and ninety-nine, entitled 'An act to reorganize and increase the efficiency of the personnel of the Navy and Marine Corps of the United States," is hereby so amended as to provide that nothing therein contained shall operate to reduce the pay which, but for the passage of said act, would have been received by any commissioned officer at the time of its passage or thereafter."

The original proviso to section 13 excepted from the purview thereof the commissioned officers "now in the navy" whose "present

pay" was thereby reduced, while the amendment thereto extends the exception so as to apply to the pay such officers may receive thereafter in case of promotion to higher grades.

We have thus pointed out the exceptions which we think material to aid us in ascertaining the meaning of section 13 as applicable to the present case. That is to say, the exception to army allowance is forage; the exception to army pay is when on shore, and then to guard against reducing the pay, then being received, section 13 excepts from the operation of the act those officers whose pay would thereby be reduced and expressly permits them to "continue to receive pay according to existing law."

If the Congress intended to continue the naval ration, it would seem that the place so to express it would have been in the proviso, wherein such officers are protected against any reduction of their old navy pay.

The words "same pay and allowances" would seem to indicate that the Congress intended, except as therein provided, to conform the pay and allowances of the commissioned officers of the line of the navy and of the medical and pay corps to the pay and allowances of "officers of corresponding rank in the army." Had the word "allowances" been omitted from the section, there would be much force in the claimant's contention. But the act embraces both subjects and the language justifies the conclusion that the act was intended as a new system for both pay and allowances.

The words "same pay and allowances, except forage," can mean but one thing, and that is that, after June 30, 1899, the commissioned officers of the line of the navy and of the medical and pay corps "shall receive the same pay and allowances, except forage," as now is or may hereafter be provided by law "for the officers of corresponding rank in the army."

Certainly those words would not be satisfied by giving naval officers less pay and allowances than therein provided for, nor would they be satisfied by giving them more, except as therein expressly provided for. It was to guard against giving them less pay than they were then receiving, that the proviso was added, but we find no such provision saving to them the naval ration.

While, on the other hand, the acceptance of navy pay, when higher than army pay, does not operate to deprive such officers of the other provisions of the section granting them army allowances when on shore, and this, we think, materially strengthens the views we have expressed herein, *i. e.*, that all the pay and allowances to which such officers are entitled, except as therein provided, are embraced in the act of 1899.

To hold that the words *same pay and allowances* are inconsistent with prior acts granting pay and mileage to naval officers, though consistent with the act granting an allowance for a ration, would be drawing a distinction without a difference. The words "same pay and allowances" embody a new system applicable to naval officers and must have a meaning independent of the prior acts covering the same subjects, except in those particulars as therein specially provided. That is to say, to continue the sea ration to naval officers,

there must be added to the words "same pay and allowances" another proviso to the effect that such officers shall, in addition thereto, continue to receive the ration provided for by a prior act. To add those or equivalent words would be legislation.

Therefore, in the absence of some such provision all the pay and allowances to which officers of the line of the navy and of the medical and pay corps are entitled, except as therein expressly provided, are covered by the language in the purview of the section.

The word "same" means identical, not different or other, and to put a different construction on the language used would be a violation of the well-known rule that where the language is free from ambiguity it is not allowable to interpret it.

14 While the rule is well established that where there are two acts on the same subject effect should be given to both if possible, yet the further equally well-established rule is "if the two are repugnant in any of their provisions, the latter act, without any repealing clause, operates, to the extent of the repugnancy, as a repeal of the first; and even where the two are not in express terms repugnant, yet if the later act covers the whole subject of the first, and embraces new provisions plainly showing that it was intended as a substitute for the first act, it will operate as a repeal of that act." (*United States v. Tynen*, 11 Wall., 88, 92, and authorities cited therein.)

The act of 1899 covers the whole subject of pay and allowances to the officers of the navy embraced in the purview of section 13, among which is the provision, new to naval officers, for army allowances for quarters and fuel as provided by Revised Statutes, section 1270, made applicable to naval officers by said section 13 when on shore.

The present case seems to come fairly within the decision last cited. Section 26, act of 1899, being the last section thereto, provides: "That all acts and parts of acts so far as they conflict with the provisions of this act are hereby repealed."

We therefore reach the conclusion that sections 1578 and 1585, granting to naval officers while at sea a ration, are inconsistent with and repugnant to the act of 1899 substituting army pay and allowances for the pay and allowance theretofore allowed to officers of the navy, and being repugnant to said act of 1899 they are, if not by the express provision of section 26, above cited, necessarily repealed by implication.

V.—*Judgment of the Court.*

WILLIAM C. GIBSON
v.
THE UNITED STATES. } No. 22864.

At a Court of Claims held in the city of Washington on the 19th day of January, 1903, judgment was ordered to be entered as follows:

The court on due consideration of the premises, find in favor of

the defendants, and do order, adjudge and decree that the petition be dismissed.

BY THE COURT.

15 VI.—*Appeal to the Supreme Court of the United States and Allowance of Same.*

In the Court of Claims.

WILLIAM C. GIBSON
v.
THE UNITED STATES. } No. 22864.

Appeal.

Now comes the claimant, William C. Gibson, and appeals to the Supreme Court of the United States from the judgment of this court entered on the 19th day of January, 1903, dismissing its petition, and moves for an allowance of this appeal.

GEORGE A. & WILLIAM B. KING,
Attorneys for Claimant.

Filed January 20, 1903.

The aforesaid application for the allowance of the appeal having been filed in open court January 20, 1903, it was ordered that the same be allowed as prayed for.

BY THE COURT.

16 In the Court of Claims.

WILLIAM C. GIBSON
v.
THE UNITED STATES. } No. 22864.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact, conclusion of law and opinion of the court, of the judgment of the court, of the application for and allowance of the appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 20th day of January, 1903.

[Seal Court of Claims.]

JOHN RANDOLPH,
Assistant Clerk, Court of Claims.

Endorsed on cover: File No. 18,790. Court of Claims. Term No. 562. William C. Gibson, appellant, *vs.* The United States. Filed January 20th, 1903.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1903.

WILLIAM C. GIBSON,
Appellant,
v.
THE UNITED STATES. } No. 195.

Appeal from the Court of Claims.

BRIEF FOR APPELLANT.

I. STATEMENT OF CASE.

The appellant, William C. Gibson, Rear-Admiral, U. S. Navy, retired, filed his petition in the Court of Claims May 12, 1902, and an amended petition November 3, 1902 (Rec. pp. 1, 2), claiming two items of pay:

1. The retired pay of a major-general in the Army instead of that of a brigadier-general which he has been receiving.

2. The commuted value of a ration at the rate of thirty cents a day while on the active list, attached to a sea-going vessel and doing duty at sea.

The court found the facts as follows (Rec. pp. 3, 4)

I. The claimant, William C. Gibson, was duly appointed a captain in the Navy, to rank from February 18, 1900. While serving in that grade, then being an officer of the Navy, with a creditable record, who served during the civil war, he was retired by the following order:

"NAVY DEPARTMENT,
WASHINGTON, *June 30, 1900.*

SIR: On July 23, 1900, you will regard yourself transferred to the Retired List of Officers of the U. S. Navy, in accordance with the provisions of section 1444 of the Revised Statutes, and with the rank and three-fourths of the sea pay of the next higher grade, i. e., Rear-Admiral, in accordance with the provisions of section 11 of the Naval Personnel Act, approved March 3, 1899.

Respectfully,
JOHN D. LONG,
Secretary.

Captain WILLIAM C. GIBSON, U. S. Navy,
Commanding U. S. S. *Texas.*"

II. Since his retirement he has received pay at the rate of four thousand one hundred and twenty-five dollars ($4,125) a year, being three-fourths of five thousand five hundred dollars ($5,500), the pay fixed by section 1261 of the Revised Statutes of the United States as that of a brigadier-general in the Army.

If paid at the rate fixed by said section 1261 for a major-general in the Army, he would receive pay at the rate of three-fourths of seven thousand five hundred dollars a year, being five thousand six hundred and twenty-five dollars ($5,625) a year, a difference over and above what he has been receiving of one thousand five hundred dollars ($1,500) a year.

III. From January 22, 1900, to July 3, 1900, inclusive, claimant was, by regular assignment, in command of the U. S. S. *Texas*, a sea-going vessel in commission. During that period he was, prior to the 18th of February, a commander in receipt of pay at the rate of four thousand dollars ($4,000) a year, and from and after that date, a captain, receiving pay at the rate of four thousand five hundred dollars ($4,500) a year. He did not, while so attached to and in command of said vessel, receive any

sea ration or commutation therefor, under Revised Statutes sections 1578 and 1585.

The commutation therefor at the rate of thirty cents per day would amount to forty-eight dollars and ninety cents ($48.90) (Rec. pp. 3, 4).

The conclusion of the court was adverse to the claimant on both branches of the case and his petition was dismissed (pp. 12, 13). The claimant thereupon appealed to this court (p. 13).

II. ASSIGNMENT OF ERRORS.

The appellant assigns the following errors in the judgment of the Court of Claims:

1. The court erred in holding that the claimant, as a rear-admiral of the Navy on the retired list, is entitled only to the retired pay of a brigadier-general in the Army, whereas said court should have held that he is entitled to the retired pay of a major-general in the Army, corresponding in rank to a rear-admiral in the Navy.

2. The court erred in holding that the claimant was not entitled to one ration, or commutation therefor, while at sea or attached to a sea-going vessel, whereas said court should have held that by virtue of the provisions of sections 1578 and 1585 of the Revised Statutes, he was entitled to thirty cents a day as the commuted value of a daily ration.

III. BRIEF OF ARGUMENT.

1. Pay as Rear-Admiral, Retired.

Statutes Quoted and Question Stated.

The question on this branch of the case is as to the proper rate of pay of the appellant after his retirement, in pursuance of the provision of section 11 of the Personnel Act, from the rank of captain which he held on the active

list to the rank of rear-admiral which he holds on the retired list.

The statutes are grouped and the issues fairly stated in the opinion of the Court of Claims. We quote from Record, p. 5, correcting errors in the text of the statutes:

"Section 1444, Revised Statutes, is as follows: 'When any officer below the rank of vice-admiral is sixty-two years old, he shall, except in the case provided in the next section, be retired by the President from active service.'

"Section 11 of the Navy Personnel Act is as follows: 'That any officer of the navy with a creditable record, who served during the civil war, shall, when retired, be retired with the rank and three-fourths the sea pay of the next higher grade.' (30 Stat. L. 1007.)

"Section 13 of the Naval Personnel Act (30 Stat. L. 1007) provides as follows:

"'That after June 30, 1899, commissioned officers of the line of the navy and of the medical and pay corps shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the army.'

"The first proviso in section 7 of the Naval Personnel Act (30 Stat L. 1005) is as follows:

"'That each rear-admiral embraced in the nine lower numbers of that grade shall receive the same pay and allowance as are now allowed a brigadier-general in the army.'

"It is insisted by claimant that being a rear-admiral on the retired list he ranks with a major-general in the army, and therefore entitled to the same pay.

"The question is therefore presented as to whether a captain in the navy when retired as a rear-admiral, under the provisions of section 1444, Revised Statutes, and section 11 of the Naval Personnel Act, shall receive the pay of a major general or that of a brigadier-general."

In addition to the statutes quoted by the Court of Claims, the following are also material as showing the

relative rank between officers of the Navy and of the Army and the pay of the several grades:

By section 1466 of the Revised Statutes of the United States:

"The relative rank between officers of the Navy, whether on the active or retired list, and officers of the Army, shall be as follows, lineal rank only being considered:

The Vice-Admiral shall rank with the Lieutenant-General.
Rear-admirals with major-generals.
Commodores with brigadier-generals.
Captains with colonels.
Commanders with lieutenant-colonels.
Lieutenant-commanders with majors.
Lieutenants with captains.
Masters with first-lieutenants.
Ensigns with second-lieutenants."

By section 1261:

"The officers of the Army shall be entitled to the pay herein stated after their respected designations:

The General: thirteen thousand five hundred dollars a year.
Lieutenant-General: eleven thousand dollars a year.
Major-General: seven thousand five hundred dollars a year.
Brigadier-General: five thousand five hundred dollars a year.
Colonel: three thousand five hundred dollars a year."

Pay of Grade of Rear-Admiral Fixed by § 13.

There is no question as to the proper rank of the claimant. The order for his retirement provides (Finding I, p. 3) that it is to be "with the rank and three-fourths of the sea pay of the next higher grade, *i. e.* rear-admiral, in accordance with the provisions of section 11 of the Naval Personnel Act, approved March 3, 1899."

His relative rank as a rear-admiral in the Navy (R. S. §1446) is with a major-general in the Army. The pay of a major-general is, by Revised Statutes, section 1261, seven thousand five hundred dollars ($7,500) a year. The provision of section 13 of the Personnel Act entitles him to the retired pay of that grade, unless there is something in some other provision of law which limits him to some other or different rate of pay. Such provision for a different rate of pay is found by the Court of Claims in the first proviso to section 7 of the act. That proviso is as follows:

"*Provided*, That each rear-admiral embraced in the nine lower numbers of that grade shall receive the same pay and allowance as are now allowed a brigadier-general in the army."

This proviso has been before this court in *Rodgers* v. *United States*, 185 U. S. 83. That was the claim of a rear-admiral of the nine lower numbers on the active list of the Navy for the pay of a major-general in the Army. It was based upon the theory that the provision of section 7 of the Personnel Act for a special rate of pay to the rear-admirals of the nine lower numbers of that grade, was temporary legislation only and was after June 30, 1899, superseded by the permanent general provision of section 13 that the officers of the line of the Navy should receive the pay of officers of corresponding rank in the Army. This court held that the proviso to section 7 allowing to each rear-admiral of the nine lower numbers on the active list the pay of a brigadier-general, constitutes permanent legislation, fixing a special rate for those nine different from the general rule prescribed by section 13. The conclusion of the Court of Claims was quoted and approved as follows (p. 92):

"Section 13 is in general terms, and the language there used does not indicate that it was the intention of the

Congress to abrogate the special provision made in section 7 for the rear-admirals 'embraced in the nine lower numbers of that grade'; and special provision having been made for them it cannot be held that a subsequent general statute, much less in the same act, was intended to alter or repeal the special provision so made."

That conclusion was reached with hesitation. "It may be conceded that the questions we have been considering are not free from doubt, and much may be said in favor of the view opposed to that we have taken." 185 U. S. 92.

The contention made by the United States in the present case goes far beyond that which was made, and with hesitation sustained, in the *Rodgers* case. It is now claimed that the special provision made in section 7 for the rear-admirals embraced in the nine lower numbers of that grade can be extended to an indefinite number of other rear-admirals not within the description of section 7.

There is no special provision in the Personnel Act for the pay of any other rear-admirals than those embraced in the nine lower numbers of that grade. The others receive the pay of a major-general in the Army solely by force of the general provision of section 13, that officers of the line of the Navy "shall receive the same pay and allowances," "as are or may be provided by or in pursuance of law for the officers of corresponding rank in the Army."

Hence all rear-admirals, other than the nine for whose pay special provision is made by section 7, must look to section 13 for a definition of their rate of pay.

Under section 13 rear-admirals on the active list not embraced in the nine lower numbers of that grade receive the same pay as major-generals in the Army. Equally must all rear-admirals on the retired list look to the provisions of section 13 alone for a determination of their rate of pay.

"Grade" Defined in the Act Itself.

But it is held by the court below, that when Congress provided for the retirement of officers having civil war service and a creditable record "with the rank and three-fourths the sea pay of the next higher grade," it meant as to captains that they should have the rank of rear-admirals, but that the pay should be only that of the nine lower numbers. This view makes it necessary to give a different meaning to the word "grade" in section 11 from that which it bears in section 7. Section 7 treats rear-admirals as of one grade. Its language is "that each rear-admiral embraced in the nine lower numbers of that grade," etc. The grade here referred to is that of rear-admiral.

The provision of section 11 is that the officers therein referred to shall "be retired with the rank and three-fourths the sea pay of the next higher grade." A reasonable construction must assign the same meaning to the word "grade" in this section as that which it bears in section 7. That meaning is that when the next higher grade is that of rear-admiral, the officer shall have the rank of rear-admiral and he shall also have three-fourths the sea pay fixed by general provisions of law for that grade.

The theory of the United States that there are two grades of rear-admirals can be sustained only by assigning to the word "grade" a different meaning in section 11 from that which it bears in section 7, the very section relied upon as creating the two grades. When section 7 uses the term "grade," it is to designate the "grade" of rear-admiral, "the grade of ensign," "the grade of lieutenant (junior grade)," etc. The nine lower rear-admirals are, by section 7, only an excepted class within a grade. The word "grade" is used in section 11 to denote a grade

in the same sense as in section 7, and not this excepted class established for a special purpose foreign to that of section 11.

Same Word Used Twice in a Statute.

A construction which assigns to the same word different meanings in different parts of the same statute is at war with well-settled principles of statutory interpretation. The contrary has been repeatedly laid down. The same word or expression used several times in several statutes dealing with the same subject means the same thing wherever used. The case is much stronger where it is used several times in the same statute.

Chief Justice Marshall, in *Alexander* v. *Alexandria*, 5 Cranch, 1, 7, says:

"If in a subsequent clause of the same act provisions are introduced, which show the sense in which the legislature employed doubtful phrases previously used, that sense is to be adopted in construing those phrases."

In *Reiche* v. *Smythe*, 13 Wall. 162, 164, this court said:

"And it is fair to presume in case a special meaning were attached to certain words in a prior tariff act, that Congress intended they should have the same signification when used in a subsequent act in relation to the same subject-matter."

In *United States* v. *Central Pacific R. R. Co.* 118 U. S. 235, 240:

"This court having thus interpreted the act of July 1, 1862, we can not, consistently with the established rules of construction, give a different meaning to substantially the same words in the act of May 7, 1878. * * * If the two acts are to be construed together and as one act, we must give the same meaning to like expressions in both. We can not say in one case that the compensation mentioned means compensation only for services on aided roads, and

in the other that it includes compensation for services on roads not aided."

Still more pointed is the language of the Supreme Court of Kansas, by Mr. Justice Brewer, now of this court, in *County-Seat of Linn County*, 15 Kansas, 501, 527:

"Now when the legislature has used a word in a statute in one sense, and with one meaning, when it subsequently uses the same word in legislation respecting the same subject-matter, it will be understood to have used it in the same sense, unless there be something in the context, or the nature of things, to indicate that it intended a different meaning thereby. The courts may not give it a different meaning to sustain their views of what the law ought to be. They must seek simply to ascertain the legislative intent, and then enforce it."

In *Robbins* v. *Omnibus R. R. Co.* 32 Cal. 472, the Supreme Court of California says:

"The two acts are not only *in pari materia*, but the latter is in effect an amendment of the former; and it is not to be supposed that a word used in a certain sense in the original act was used in a different sense in the subsequent one."

In *Pitte* v. *Shipley*, 46 Cal. 154, the same court says:

"It is a familiar principle of construction that a word repeatedly used in a statute will be presumed to bear the same meaning throughout the statute unless there is something to show that there is another meaning intended."

In *Queen* v. *Poor Law Commission*, 6 Adolphus & Ellis, *Co* 66, Lord Denman says:

"We disclaim altogether the assumption of any right to assign different meanings to the same words in an act of parliament on the ground of a supposed general intention in the act. We find it necessary to give a fair

and reasonable construction to the language used by the legislature; but we are not to assume the unwarrantable liberty of varying that construction for the purpose of making the act consistent with any views of our own."

Raymond v. *Cleveland*, 42 Ohio State, 529, states the exact rule governing this case:

"Where the meaning of a word or phrase in a statute is doubtful, but the meaning of the same word or phrase is clear where it is used elsewhere in the same act or an act to which the provision containing the doubtful word or phrase has reference, the word or phrase in the obscure clause will be held to mean the same thing as in the instances where the meaning is clear."

Application to the Present Case.

These authorities afford a guide to the construction of the term "grade" in section 11. The grade of rear-admiral, according to section 7, is a single grade. The next higher grade to which the claimant was advanced upon his retirement under section 11 was the grade of rear-admiral. He is entitled to the rank of that grade. He is also entitled to three-fourths of the sea pay of that grade.

What is "three-fourths the sea pay" of "the grade of rear-admiral"? By section 1466 of the Revised Statutes (*ante*, p. 5), rear-admirals rank with major-generals of the Army, "whether on the active or retired list." The claimant, as a rear-admiral on the retired list of the Navy, is therefore of corresponding rank with a major-general on the retired list of the Army.

By section 13 of the Personnel Act, the pay of officers of the line of the Navy is to be the same as that of the officers of corresponding rank in the Army. By section 1261 of the Revised Statutes (*ante*, p. 5), the pay of a major-general in the Army is $7,500 a year.

Three-fourths of this sum, therefore, viz: $5,625, constitutes the correct rate of pay of the claimant as an officer of corresponding rank in the Navy.

The Proviso to Section Seven.

By section 7 it is "*Provided*, That each rear-admiral embraced in the nine lower numbers of that grade shall receive the same pay and allowance as are now allowed a brigadier-general in the army." Hence, it is insisted on behalf of the United States that the claimant is entitled to be paid only as a brigadier-general in the Army.

We have already shown that it would be contrary to all authority on the construction of statutes to treat these nine lower numbers of the grade of rear-admiral as constituting a distinct grade by themselves, when they are treated by section 7 itself as only certain specific numbers within a single grade. It would be equally contrary to well-settled rules as to the contruction of provisos to extend the operation of this proviso beyond "the nine lower numbers of" the grade of rear-admiral therein referred to so as to make it embrace, not merely those nine to whom, by its terms, it is limited, but, in addition, an indefinite number of other rear-admirals.

This proviso immediately follows the enacting clause of the seventh section, which establishes the grades of the active list of the Navy and fixes the number of officers within each grade. It thus constitutes a proviso used in the strict and technical sense and is not, as frequently happens, a proviso used in a loose and inaccurate manner as legislation independent of the enacting clause to which it is attached.

Provisos properly used as such are subject to the rule long ago laid down for their construction by Mr. Justice Story in two noted cases. "The general rule of law," he says in *United States* v. *Dickson* (15 Pet. 141, 165), "which

has always prevailed and become consecrated almost as a maxim in the interpretation of statutes, that where the enacting clause is general in its language and objects and a proviso is afterwards introduced, that proviso is construed strictly and takes no case out of the enacting clause which does not fall fairly within its terms. In short, a proviso carves special exceptions only out of the enacting clause; and those who set up any such exceptions must establish it as being within the words as well as within the reason thereof." And in *Minis* v. *United States*, 15 Pet. 423, 445, "The office of a proviso, generally, is either to except something from the enacting clause, or to qualify or to restrain its generality or to exclude some possible ground of misinterpretation of it, as extending to cases not intended by the legislature to be brought within its purview."

And in *Ryan* v. *Carter*, 93 U. S. 78, 83, the court reaffirms the rule.

According to the rule laid down by these authorities, those who allege a case to be within the proviso to section 7—that is, who allege that any particular rear-admiral in the Navy shall receive only the pay and allowance of a brigadier-general in the Army—must show such rear-admiral to be embraced "within the words as well as within the reason" of the proviso to section 7. This rear-admiral is certainly not within the words of the proviso, for he is not one of those "embraced in the nine lower numbers of that grade." He can, therefore, not be taken by virtue of anything contained in that proviso, out of the general rule laid down by the statute for the pay of officers of the Navy that they shall "receive the same pay and allowances" as "the officers of corresponding rank in the Army."

The present is a forcible instance for a strict application of the rule as to provisos. The enacting clause of section

7 fixes the numbers of the various grades of officers on the active list of the Navy. The proviso limits the rear-admirals of the nine lower numbers of that grade to a lower rate of pay than that to which they would otherwise be entitled. As if to emphasize the distributive character of the provision and to confine its application to the particular nine officers referred to, the singular number is employed: "That *each* rear-admiral," etc. To take this language as establishing a new and distinct grade, and then to put the officers retired under section 11 into that grade, would extend the language of the proviso far beyond its terms, or beyond its literal or reasonable import.

A number is inelastic. When Congress says "nine," only nine persons can be affected at any one time by the provision. A construction extending this proviso beyond the nine lower numbers in the grade of rear-admiral would make the expression mean "nine, and such additional number as may be retired under section 11 of this act." So forced a construction should need only to be stated to be rejected.

Only One Grade of Rear-Admiral in Practice.

The uniform practice of the Navy Department as evidenced by all official publications treats the rear-admirals as constituting only a single grade.

The Navy Regulations, edition of 1900, contain many references to rear-admirals; but nowhere can be found such expressions as "rear-admiral senior grade" or "rear-admiral junior grade."

Thus, paragraph 24 defines the relative rank between officers of the Navy and those of the Army, and ranks rear-admirals with major-generals. Paragraph 33 defines the command proper to a rear-admiral. The only distinction among these officers is in regard to "such rear-

admirals as are, by law, restricted to the performance of engineering duties"; thus only emphasizing the absence of any distinction based upon difference of pay. By paragraph 77, sub-paragraph 3, the salute to which a rear-admiral is entitled is defined. Paragraph 138 directs how a rear-admiral shall return a salute. Paragraph 186 provides what the funeral escort of a rear-admiral shall be.

So, too, the rear-admirals are contained in a single list in the Navy Register (Edition of July 1, 1903, p. 4). No distinction whatever is made beyond the mere order of names by seniority of commission.

The opinion of this court in *Rodgers* v. *United States*, 185 U. S. 83, throughout treats rear-admirals as a single grade and the nine lower numbers of that grade on the active list as a special exception to the general policy of the law placing rear-admirals on an equality with major-generals in the Army. Nowhere are the nine lower numbers on the active list of rear-admirals treated as a distinct grade. It is even considered a doubtful question (concluding paragraph, pp. 92, 93) whether Congress intended the reduction of their pay to that of brigadier-generals to operate as permanent legislation at all. Much less is there any suggestion of a construction of the language of section 7 which would extend the language of its first proviso, beyond the nine officers therein specified, to an indefinite number of others.

"Grade" Defined by Army Regulations.

Not only are rear-admirals treated by the statutes and the Navy Regulations as constituting a single grade, but other high authorities sustain the same sense of the term as the only admissible one.

The Army Regulations (edition of 1901), Article III, thus define rank and grade:

"Military rank is that character or quality bestowed on military persons which marks their station, and confers eligibility to exercise command or authority in the military service within the limits prescribed by law. It is divided into degrees or grades, which mark the relative positions and powers of the different classes of persons possessing it."

Paragraph nine opens as follows:

"The following are the grades of rank of officers and non-commissioned officers."

"Grade" Defined by Court of Claims.

Under R. S. section 1556, lieutenants in the Navy are entitled to one rate of pay during their first five years as lieutenants and a higher rate after five years. In *Schuetze* v. *United States*, 24 C. Cls. 299, the question was as to the meaning of a grant to a lieutenant in a statute of "the highest rates of pay attached to their respective grades." They were held to mean the highest possible rate of pay after any length of service. The following definition of grade is pertinent (p. 303):

"A grade is a step in a series, a rank; but no lieutenant obtains increased rank simply by length of service. To obtain rank he must be eligible for promotion, must pass an examination, must be nominated by the President to the Senate, must be confirmed by that body, and must receive a commission. None of the incidents of advance in rank occur at the moment when his first five years of service terminate and when his pay increases because of length of service alone."

Also the following (p. 305):

"A grade is a rank, and in our opinion Congress intended to give plaintiff the highest pay of his rank."

Similarly there is no difference in grade between one rear-admiral and another. On the active list there are

two rates of pay, but all are in a single grade, as says the very provision creating the difference of pay. All rank with major-generals in the Army, and all are entitled to major-general's pay, unless deprived thereof by some specific provision for a different rate.

"Grade" Defined by Attorneys-General.

A somewhat similar question was presented to Attorney-General William Wirt in 1822.

By an act "authorizing an augmentation of the Marine Corps and for other purposes," approved April 16, 1814 (3 Stat. L. 124, Section 3), the President was authorized to confer brevet rank on officers of the Marine Corps "who shall have served ten years in any one grade."

Congress by the act of March 3, 1817, entitled "An act to fix the peace establishment of the Marine Corps" (3 Stat. L. 376) provided that that establishment should consist of "one lieutenant-colonel commandant, nine captains," etc.

A captain having served more than ten years in that grade, the question arose what was the next higher grade in which he was entitled to brevet rank. The question was thus answered (1 Opinions Attorneys-General, 578, 582):

"Captain Wainwright is, by the act of 16th April, 1814, entitled to brevet promotion: how can he be promoted *in that corps*, but by giving him the brevet of a lieutenant-colonel? But this, it is said, will be to give him two steps instead of one. Not so: on the present organization of that corps, there is but one step from the post of captain to that of lieutenant-colonel; the former intermediate step of major having been abolished by Congress: it being in the power of Congress to modify the Army at pleasure, they may give it any form they please. They may have, if they choose, only three grades in the Army; making the captain the first grade, the colonel the second, and the general the third. Thus, in

the present instance, they have exercised their power by abolishing the intermediate grade of major, and making the lieutenant-colonelcy the proximate grade to the captaincy. And who shall gainsay them? Suppose the promotion was by commission, instead of brevet: must not the captain step at once from the post of captain to that of lieutenant-colonel?"

According to this view not only was the retirement of the claimant in this case regularly made from the grade of captain into the next higher grade as now existing, that of rear-admiral, but all the incidents to that advancement in rank follow, among which is that stated of the 11th section, "three-fourths the sea pay of the next higher grade." And the pay must be the regular pay of the grade, not that of some excepted class within the grade, the claimant not being a member of that class.

The question what constitutes a grade was again presented to the Attorney-General in 1888 by a request from the Secretary of the Navy for a construction of the act of August 5, 1882, 22 Stat. L. 285, creating among other officers of the active list of the Medical Corps of the Navy "ninety assistant and passed assistant surgeons." The syllabus accurately states the decision (19 Opinions Attorneys-General, p. 169):

"In the organization of the Medical Corps of the Navy a passed assistant surgeon and an assistant surgeon are officers of one and the same *grade*, but belong to different classes in such grade.

"A passed assistant surgeon is simply an assistant surgeon who has been officially notified that he has passed successfully the examination necessary to be undergone before he can be appointed a full surgeon when a vacancy occurs."

In support of this position the following reasoning having much pertinence to the present case was used (pp. 171, 172):

"Indeed, the case of passed assistant surgeons, under the Revised Statutes, was precisely similar to that of passed midshipmen under the old law. That law recognized no such grade as passed midshipman. Midshipman was the *grade*, and passed midshipmen merely a 'class.' Hence, the act of March 3, 1845, section 4 (5 Stat. 794), declares that 'no more than one hundred and eighty passed midshipmen, and those senior in rank, shall at the same time receive the pay fixed by law for that *class* of officers.' But the act of 1806, which was still in force when the act of 1845 took effect (2 Stat. 390), organizing the Navy, declared 'that the officers shall not exceed the following numbers and *grades*; that is to say, thirteen captains, nine masters-commandant, seventy-two lieutenants, and one hundred and fifty midshipmen.' * * *

"It may be added, that passed midshipmen received more pay than midshipmen, just as passed assistant surgeons are entitled to more pay than assistant surgeons.

"It seems very clear, then, that as the law stood at the time the act of August 5, 1882 (supra), was passed, there was no such *grade* in the Navy as that of passed assistant surgeon."

With much more force does this argument apply to the present case and forbid the treatment of the nine lower numbers in the grade of rear-admiral and those above them as constituting two distinct grades when the very section relied upon for that purpose refers to the "grade" of rear-admiral as a single one.

Comparison with Other Sections.

The word "grade" as used in section 11 has the same meaning as when used in section 7—that is, when a captain is retired under section 11, "the next higher grade" into which he goes is the "grade" of rear-admiral as it is styled in section 7. "Three-fourths the sea pay of" that grade refers to the normal pay of the grade—that is, the pay of a major-general in the Army—not an exceptional

rate of pay specifically attached to nine numbers in the grade of rear-admiral, of which nine this claimant is not one.

Not only is this construction required by the plain language of the statute, but a comparison of section 11 with two other sections providing for the retirement of officers demonstrates that Congress legislated with reference to a distinction among different circumstances of retirement. We refer to sections 8 and 9 of the Personnel Act, which are as follows:

"Sec. 8. That officers of the line in the grades of captain, commander, and lieutenant-commander may, by official application to the Secretary of the Navy, have their names placed on a list which shall be known as the list of 'applicants for voluntary retirement,' and when at the end of any fiscal year the average vacancies for the fiscal years subsequent to the passage of this act above the grade of commander have been less than thirteen, above the grade of lieutenant-commander less than twenty, above the grade of lieutenant less than twenty-nine, and above the grade of lieutenant (junior grade) less than forty, the President may, in the order of the rank of the applicants, place a sufficient number on the retired list with the rank and three-fourths the sea pay of the next higher grade, as now existing, including the grade of commodore, to cause the aforesaid vacancies for the fiscal year then being considered.

"Sec. 9. That should it be found at the end of any fiscal year that the retirements pursuant to the provisions of law now in force, the voluntary retirements provided for in this act, and casualties are not sufficient to cause the average vacancies enumerated in section eight of this Act, the Secretary of the Navy shall, on or about the first day of June, convene a board of five rear-admirals, and shall place at its disposal the service and medical records on file in the Navy Department of all the officers in the grades of captain, commander, lieutenant-commander, and lieutenant. The board shall then select, as soon as practicable after the first day of July, a sufficient number of

officers from the before-mentioned grades, as constituted on the thirtieth day of June of that year, to cause the average vacancies enumerated in section 8 of this act. Each member of said board shall swear, or affirm, that he will, without prejudice or partiality, and having in view solely the special fitness of officers and the efficiency of the Naval Service, perform the duties imposed upon him by this act. Its finding, which shall be in writing, signed by all the members, not less than four governing, shall be transmitted to the President, who shall thereupon, by order, make the transfers of such officers to the retired list as are selected by the board:

"*Provided*, That not more than five captains, four commanders, four lieutenant-commanders, and two lieutenants are so retired in any one year. The promotions to fill the vacancies thus created shall date from the thirtieth day of June of the current year:

"*And provided further*, That any officer retired under the provisions of this section shall be retired with the rank and three-fourths the sea pay of the next higher grade, including the grade of commodore, which is retained on the retired list for this purpose." (30 Stat. L. 1005, 1006.)

These sections, in effect, provide that certain retirements, made voluntarily under section 8 or involuntarily under section 9, shall be with the rank and three-fourths the sea pay of the next higher grade. Thus far they resemble section 11. But here the resemblance ends. Section 8 adds, "as now existing, including the grade of commodore." Section 9 varies this language to "including the grade of commodore, which is retained on the retired list for this purpose." Congress, recognizing that it had, for all other purposes, abolished the grade of commodore, expressly retained it for the purpose of those sections only. Commodores rank with brigadier-generals (R. S. section 1466), and consequently captains retired under these sections draw three-fourths of brigadier-general's pay.

In sections 8 and 9 Congress found it necessary, in order to accomplish a certain purpose, to use a direct expression of that purpose. In section 11 the court below holds that the same purpose, in some unexplained manner, was accomplished without the words found necessary in sections 8 and 9.

In view of the use of language retaining the grade of commodore in sections 8 and 9, its omission in section 11 was clearly intentional. The retirement of officers of the Navy, "with a creditable record, who served during the civil war," is to be "with the rank and three-fourths the sea pay of the next higher grade." That is all. For the purposes of section 11, the next higher grade to that of captain is rear-admiral. So it was held by the Attorney-General in an opinion rendered April 8, 1899, immediately after the passage of the act (22 Opinions, 433). So it has been uniformly held by the Navy Department.

There is a reason for this distinction. Officers retired under section 8 are those who voluntarily retire from active service before the age of compulsory retirement. Retirements under section 9 are involuntary and are made by a board of officers whose duty it is to examine the records of all the officers in certain grades, the implied purpose being that the least efficient are to be retired. In neither of the cases provided for in these sections is there merit attached to the officer. Under section 8, he retires for his own convenience or leisure, at an age when his faculties, physical and mental, are normally in full activity. Under section 9, he retires because he is one of the less efficient, and his place is wanted for a younger and more capable officer.

The effect of these sections is thus officially described:

"Section 8 offers a valuable and much-needed officer a premium to go on the retired list at the very time when the number of officers is far short of the number

required by the needs of the service, and when Congress is called upon for more. Section 9, on the other hand, gives a premium to the same end to an officer whose services are no longer of value, and who receives this premium when other officers equally deserving are retired with no such benefit." (Annual Report of Secretary of the Navy, 1901, p. 9.)

Altogether different is the object of section 11. The officers there described do not retire for their own benefit or on account of minor efficiency. They are retired in the regular course of events, at the age of sixty-two years, in pursuance of a long-established policy of the Government, expressed in Revised Statutes, section 1444. At that age, every officer in the superior grades of the Navy, be he healthy or sickly, strong or weak, in mental vigor or of failing mind, is peremptorily retired from active service. A large proportion of the officers who are reaching that age gave their youthful activity and ardor to the service of the Government in the civil war, in the days of its utmost need. Where such officers have failed to attain the highest rank in the Navy at the time of their retirement, it is but fitting that a special distinction and reward be bestowed upon them.

Superior distinction is given by conferring on each upon his retirement a rank of the next higher grade. In so doing Congress did not retain the otherwise extinct grade of commodore, as it did in the case of retirements, voluntary or involuntary, under sections 8 and 9. On the contrary, officers retired under section 11 go from the grade of captain directly up to the next present grade in the navy—that of rear-admiral.

It was insisted by learned counsel for the United States in the court below, however, that here the difference between retirement under sections 8 and 9 on the one hand, and retirement under section 11 on the other stops.

He insisted that the only difference is that claimant has the advantage of being retired as a rear-admiral, with the added influence, dignity, respect, and deference shown to that high office, a distinction that captains retired upon voluntary or involuntary application, under sections 8 and 9 of the Naval Personnel Act do not enjoy.

The language of the law, however, is not satisfied merely by giving the rank of the next higher grade. Its language is, "the rank and three-fourths the sea pay of the next higher grade." A special reward is thus conferred upon the officers retired under section 11 as regards their pay just as clearly as is the special distinction of rank. If they get only brigadier-general's pay they are in no better position than those retired under sections 8 and 9 with the grade of commodore, for that is their rate of pay. What they are entitled to is "three-fourths the sea pay" of the grade of rear-admiral, not three-fourths the sea pay of the grade of commodore.

Thus, not only does the literal language of section 11 require that captains retired under that section shall receive the full retired pay of "the next higher grade" of rear-admiral, but Congress intentionally made a distinction between them and those retired under sections 8 and 9. A captain, retired under section 8 or 9, retires as commodore, with the retired pay of a commodore, corresponding to that of a brigadier-general in the Army. A captain retired under section 11, retires with the rank of rear-admiral, and is entitled to the retired pay of a rear-admiral, corresponding to that of a major-general in the Army.

The Construction a Reasonable One.

The provision of section 11, construed as we have insisted it should be, allows to civil war veterans who have attained the rank of captain on the active list of the

Navy, both the full rank and the full retired pay of a rear-admiral. It is contended on behalf of the United States that this construction is too liberal and that Congress could not have intended it.

In this, however, there is no absurdity. It is a benefit intentionally conferred upon the veterans of the civil war, who also served through the Spanish war, who are now being retired. What are they promoted for if they are not to have an increase of pay?

Civil War Veterans' Legislation.

There is no novelty in the enactment of legislation which singles out veterans of the civil war for special benefits. There is a long line of such legislation granting such benefits, by way of bounties, pensions, extra pay, preference in appointments to the civil service, and permitting service in the civil war to be counted as either single or double time for purposes of longevity pay in the Army or Navy.

Many of these statutes have come before the courts, and it has always been held that they should receive a fairly liberal construction, allowing the officer or soldier the full benefit which Congress designed.

Such, for instance, were the decisions of the Court of Claims in *Hosmer* v. *United States*, 3 C. Cls. 6; *Allstaedt* v. *United States*, 3 C. Cls. 284; *Kelly* v. *United States*, 5 C. Cls. 476; *Henry* v. *United States*, 6 C. Cls. 162; *Cartlidge* v. *United States*, 24 C. Cls. 155; and *Sowle* v. *United States*, 38 C. Cls.

In three of the cases cited the judgments were affirmed by this court: *United States* v. *Hosmer*, 9 Wall. 432 (see conclusion of opinion, p. 435); *United States* v. *Kelly*, 15 Wall. 35; *United States* v. *Henry*, 17 Wall. 405. In none of them was the judgment reversed.

It was, indeed, found necessary to decide adversely to the

claim of a civil war veteran, who asked the courts to review the decision of the head of an executive department as to his continued fitness for office. But the decision to that effect was reached by a bare majority of the Court of Claims, *Keim* v. *United States*, 33 C. Cls. 174, and with a vigorous dissent from one of the judges (pp. 187–190). And this court, though affirming the judgment, said (177 U. S. 290, 295):

"No thoughtful person questions the obligations which the nation is under to those who have done faithful service in its Army or Navy."

In the present case the court is not dealing with a statute under which the rights of the veteran are subject to the discretion of any officer. The statute here involved gives him a legal right to "the rank and three-fourths the sea pay of the next higher grade." Why should he not have the full rate of pay appropriate to the rank which Congress has seen fit to confer upon him?

No better reasons are suggested than —

1. That Congress has in another section of the same act cut down the pay of nine other officers to a sum below that which would otherwise be allowed to officers of their grade; and —

2. That the allowance of this claim would result in giving these officers, when rear-admirals on the retired list, a rate of pay somewhat in excess of that which they drew on the active list when they were only captains.

Such grounds are quite inadequate to sustain the restricted construction contended for by the defense.

The claimant should therefore on this branch of the case have judgment for the difference between three-fourths the sea pay of a brigadier-general, being at the rate of four thousand one hundred and twenty-five dollars ($4,125) a year, at which he has been paid since his re-

tirement, and three-fourths the pay of a major-general corresponding to rear-admiral in the Navy, which would amount to five thousand six hundred and twenty-five dollars ($5,625), or a difference of fifteen hundred dollars ($1,500) a year.

2. Commutation of Ration.

Statutes Quoted and Question Stated.

Provision is made for a ration or commutation to officers of the Navy on sea-going vessels by the following sections of the Revised Statutes:

§ 1578. "All officers shall be entitled to one ration, or to commutation therefor, while at sea or attached to a sea-going vessel."

§ 1585. "Thirty cents shall in all cases be deemed the commutation price of the navy ration."

While the claimant was on the active list he was at sea in command of the *Texas*. After July 1, 1899, he failed to receive the sea ration or commutation which had previously been allowed to all officers at sea.

The right to the sea ration or commutation thereof is denied by the court below (rec. p. 9).

The denial is on account of the provision in the Personnel Act (§ 13) that after June 30, 1899, officers of the Navy—

"Shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the army." (30 Stat. L. 1007.)

The position of the court below is that the grant to officers of the Navy of "the same pay and allowances" as provided for army officers is a denial of any other

allowances by an implied repeal of all other laws granting allowances to naval officers. The statute is read as if there were added at the close of the words quoted the following: "And all acts granting pay or allowances to such officers are repealed"; or as if the words "the same" were followed by the words "and no other" (such as appear in R. S. § 823), so that it would read "the same and no other pay and allowances."

There is in this act no express repeal of prior laws. If other laws are repealed, it is by an implied repeal derived from the grant of the same pay and allowances as provided for army officers.

Our position is that the grant of "the same pay and allowances" operates as a repeal of the old navy pay and allowances only where the possession of the old navy pay and allowances is inconsistent with the receipt of the army pay and allowances. Thus, in granting army pay there is an implied repeal of the navy pay because there is an inconsistency between the receipt of both army pay and navy pay. The grant of army mileage repeals navy mileage. But the sea ration is an allowance which is not inconsistent with army allowances, an allowance for which no substitute is offered by the grant of army allowances, an allowance peculiarly appropriate to naval service for which there can not be an army equivalent. For these reasons, that allowance is not repealed.

Army and Navy Allowances Before 1899.

In both Army and Navy for many years the compensation of officers was made up of pay proper and of a large number of allowances (*Emory* v. *United States*, 19 C. Cls. 254, 112 U. S. 510; *United States* v. *Philbrick*, 152 U. S. 120). Part of these depended on statute and part on executive order. The pay table was a highly complicated affair.

In 1870, by the two acts of July 15, chapter 294, section 24, and 295, sections 3 and 4 (16 Stat. L. 320, 330), the pay of both branches of the service was entirely remodeled. Allowances were in greater part abolished and fixed rates of annual pay, now appearing in R. S. sections 1261 and 1556, took the place of the previous pay proper and allowances.

In relation to the Army it was provided, this now appearing as R. S. section 1269:

"No allowances shall be made to officers in addition to their pay, except as hereinafter provided."

Section 1270 provides for the allowances of "fuel, quarters and forage in kind" and section 1273 for mileage. Forage, by a later act embodied in section 1270, may be commuted where it can not be furnished by the proper departments, but is allowed (section 1272) only for horses authorized by law and actually kept in service.

By a later act, that of June 18, 1878, section 9 (1 Supp. R. S. 190), commutation of quarters is allowed where there are no public quarters. The allowance of fuel is a privilege of buying fuel at a fixed rate much below the market rate (Army Regulations, Arts. 1101, 1110). These are the only allowances to which army officers were entitled on March 3, 1899.

The reorganization of navy pay was even more thorough than of army pay. Officers' pay is provided for by sections 1556 and 1557. Section 1558 declares:

"The pay prescribed in the two preceding sections shall be the full and entire compensation of the several officers therein named, and no additional allowance shall be made in favor of any of said officers on any account whatever, except as hereinafter provided."

The only allowances "hereinafter provided" are the ration when at sea (sections 1578 and 1585) and mileage (section 1566 as amended by act of August 5, 1882, 22 Stat. L. 286). These were the only allowances to naval officers on March 3, 1899.

An army officer receives mileage when he travels, except (Act March 3, 1899, 30 Stat. L. 1068) "to and from our island possessions." When at a post or station he receives quarters or commutation, fuel at a fixed price and, if using a horse, forage or commutation thereof. All army allowances are shore allowances, except mileage when traveling at sea to a foreign country.

A naval officer received his mileage if he traveled on shore. When at sea he received the sea ration. This was given for his actual subsistence because the nature of his duty prevented access to the ordinary source of supply. When stationed ashore he had no allowances whatever. His only allowance, except mileage, was a sea allowance.

Navy Ration and Army Allowances.

The Personnel Act grants commissioned officers of the line of the Navy and of the Medical and Pay Corps the same pay and allowances, except forage, as army officers. Hereby they get the pay of army officers in lieu of navy pay; when traveling, army mileage in lieu of navy mileage; when ashore, army allowances of quarters or commutation and fuel, which they had not before. These the law grants them in express terms; by necessary implication their navy pay and navy mileage for which there is an army equivalent are taken away. The benefit to them in the way of allowances is entirely when on shore.

There would be no inconsistency between the retention of the navy sea ration and the grant of army allowances for shore duty made by the act.

The respective allowances may be thus tabulated:

Naval Officer. *Old Law.*		Army Officer.	Naval Officer. *New Law.*	
At sea:	*Ashore:*	*On all duty:*	*At sea:*	*Ashore:*
Ration	Mileage	Mileage	Ration	Mileage
		Quarters		Quarters
		Fuel		Fuel
		Forage (if he has a horse)		

This illustrates how entirely consistent with the grant of army allowances is the retention of the navy sea ration. Nor would it create any inequality, since the army officer has no sea duty. We may therefore summarize the result of this examination:

(1) That the army allowances newly given to the Navy are allowances for shore duty.

(2) That there is no equivalent in army allowances for the navy sea ration.

(3) That there is no inconsistency in receiving army allowances while on shore and the navy sea ration while at sea.

Presumption Against Implied Repeal.

We now reach the question whether under the rules of construction of statutes recognized by the courts, the grant of "the same pay and allowances" as is received by the Army is to be considered as taking away the navy sea ration under such conditions as we have shown to exist. It is a question of repeal by implication, and upon this subject there have been numerous judicial decisions by this court.

In *Harford* v. *United States* (8 Cranch, 109), the following is said:

"The act of 1806 does not profess to repeal the fiftieth section of the collection act as to the prohibited goods,

and a repeal, by implication, ought not to be presumed, unless from the repugnance of the provisions the inference be necessary and unavoidable. No such manifest repugnance appears to the court. The provisions may well stand together, and indeed serve as mutual aids."

In *McCool* v. *Smith* (1 Black, 470):

"A repeal by implication is not favored. The leaning of the courts is against the doctrine, if it be possible to reconcile the two acts of the legislature together. * * * It is possible to reconcile the two acts."

In *Ex parte* Yeager (8 Wall. 105):

"Repeals by implication are not favored. They are seldom admitted except on the ground of repugnancy; and never, we think, when the former act can stand together with the new act."

In the case of the *Distilled Spirits* (11 Wall. 365):

"Statutes *in pari materia*, like the acts of 1864 and 1866, are to be construed together, and repeals by implication are not favored if the acts can reasonably stand together."

In *Henderson's Tobacco* (11 Wall. 657), the subject is fully reviewed and summarized in the following statement:

"Statutes are, indeed, sometimes held to be repealed by subsequent enactments, though the latter contain no repealing clauses. This is always the rule when the provisions of the latter acts are repugnant to those of the former, so far as they are repugnant. The enactment of provisions inconsistent with those previously existing, manifests a clear intent to abolish the old law. In the *United States* v. *Tynen*, 11 Wall. 92, it was said by Mr. Justice Field, that 'when there are two acts upon the same subject, the rule is to give effect to both, if possible. But if the two are repugnant in any of their provisions, the latter act, without any repealing clause, operates to

the extent of the repugnancy as a repeal of the first; and even where two acts are not, in express terms, repugnant, yet, if the latter act covers the whole subject of the first, and embraces new provisions, plainly showing that it was intended as a substitute for the first act, it will operate as a repeal of that act.' For this several authorities were cited, some of which have been cited on the present argument. This is undoubtedly a sound exposition of the law. But it must be observed that the doctrine asserts no more than that the former statute is impliedly repealed, so far as the provisions of the subsequent statute are repugnant to it, or so far as the latter statute, making new provisions, is plainly intended as a substitute for it. Where the powers or directions under several acts are such as may well subsist together, an implication of repeal can not be allowed."

In *Red Rock* v. *Henry* (106 U. S. 601):

"The leaning of the courts is against repeals by implication and if it be possible to reconcile two statutes, one will not be held to repeal the other."

In *Frost* v. *Wenie* (157 U. S. 46, 58):

"It is well settled that repeals by implication are not to be favored. And where two statutes cover, in whole or in part, the same matter, and are not absolutely irreconcilable, the duty of the court—no purpose to repeal being clearly expressed or indicated—is, if possible, to give effect to both. In other words, it must not be supposed that the legislature intended by a later statute to repeal a prior one on the same subject, unless the last statute is so broad in its terms and so clear and explicit in its words as to show that it was intended to cover the whole subject, and, therefore, to displace the prior statute."

The rule is thus laid down that if two statutes are not absolutely irreconcilable, one will not be held to repeal the other. The older act says that a naval officer shall have a ration when at sea or attached to a sea-going ves-

sel; the later act says that he shall receive the same pay and allowances as an army officer. Can these two acts possibly be reconciled? They can be, by giving him the same pay and allowances as an army officer, but by retaining for him the navy sea ration for which there is no army equivalent.

Generalia Specialibus Non Derogant.

There is an application of this general principle found in another and more specific rule. The rule is stated by Black on Interpretation of Laws, p. 116, as follows:

"As a corrollary from the doctrine that implied repeals are not favored, it has come to be an established rule in the construction of statutes that a subsequent act, treating a subject in general terms, and not expressly contradicting the provisions of a prior special statute, is not to be considered as intended to affect the more particular and specific provisions of the earlier act, unless it is absolutely necessary so to construe it in order to give its words any meaning at all. This rule is founded upon, or expressed by, the maxim *Generalia specialibus non derogant.*"

It is similarly stated by Sedgwick (2d Ed. Pomeroy's notes), p. 97, and the following adequate reason given for the rule, p. 98:

"The reason and philosophy of the rule is, that when the mind of the legislator has been turned to the details of a subject, and he has acted upon it, a subsequent statute in general terms, or treating the subject in a general manner, and not expressly contradicting the original act, shall not be considered as intended to affect the more particular or positive previous provisions, unless it is absolutely necessary to give the latter act such a construction, in order that its words shall have any meaning at all."

Dwarris had stated the same rule, perhaps not quite so clearly as the later writers. See Potter's Dwarris, p. 273, as follows:

"The meaning of which is, that when the law descends to particulars, such more special provisions must be understood as exceptions to any general rules laid down to the contrary; and the general rules must not (*vice versa*) be alleged in confutation of the special provisions."

This rule was applied by this court in *United States* v. *Greathouse* (166 U. S. 501). Revised Statutes, section 1069, bars all claims not presented within six years after the claim first accrues, but a proviso saves the claims of various persons under disability. The act of March 3, 1887, section 1 (24 Stat. L. 505), provides that no suit against the United States should be allowed, unless brought within six years after the right accrued and expresses no exception. Strong ground existed for asserting that the whole subject was covered by the act of 1887, and that its omission of any saving clause was a significant repeal of the entire previous act on the same subject containing the saving clause. But this court said (p. 605):

"Those exceptions were not expressly abrogated by the act of 1887, and they could be held to be repealed only by implication, but repeals by implication are not favored, and when two statutes cover in whole or in part the same matter, and are not absolutely irreconcilable, effect should be given, if possible, to both of them. *Frost* v. *Wenie*, 157 U. S. 46, 58: *United States* v. *Healey*, 160 U. S. 136, 147."

That case is closely analogous to the present. It was open to the court to say there that the new law was intended as a system substituted for the old; that the passage of the new act of limitation without exceptions definitely showed a purpose that the exceptions should no longer be in force. These positions, strange as they were, had to yield to the rule against implied repeals, as there forcibly stated.

Of the cases here cited, we have already quoted from

one, and now call attention to the second,—*United States* v. *Healey* (160 U. S. 136). Revised Statutes, section 2357, had fixed $1.25 an acre as the price of public lands, when offered for sale with a proviso increasing this to $2.50 for alternate reserved lands along land-grant railroads. The act of March 3, 1877 (19 Stat. L. 377), provided for the reclamation and sale of desert lands at $1.25 an acre, making no exception of alternate reserved lands. This court held that the general terms of the act of 1877, fixing $1.25 an acre, did not repeal the special provision of Revised Statutes, section 2357, fixing a higher price for alternate reserved lands, declaring (p. 146):

"It is as if the act of 1877, in terms, excepted from its operation such lands as are described in the proviso of § 2357 of the Revised Statutes. Thus construed, both statutes can be given the fullest effect which the words of each necessarily require."

Rodgers v. *United States*, 185 U. S. 83, which has been fully referred to as an authority on the first branch of this case, constitutes an application of the rule of *Generalia specialibus non derogant*.

These cases establish the rule that a general law does not imply a repeal of special laws on the same subject. The grant of the navy sea ration was a special grant. The grant of section 13 of the Personnel Act is a general grant. The latter does not repeal the former.

No Violation of the Principle of Equality.

It may perhaps be suggested that to give to navy officers this allowance which army officers have not, is to violate the principle of equality which, within certain limits, is embodied in section 13 of the Personnel Act. The principle of equality is not violated for this reason: The normal duty of army officers is ashore; they have fuel

and quarters besides pay, and these the navy shares; but the army officer, with exceptions of so little general weight as to be of no importance in determining the rule, has no duty at sea. The naval officer's normal duty is at sea; if he receives a ration while on this duty, it can not be said that he receives an advantage over the army officer who has no such duty. If army officers regularly had sea duty, it might be a cause of complaint if naval officers had a sea ration and army officers had none.

Reduction of Navy Pay Forbidden.

But the principle of equality between army and navy officers under the Personnel Act and its amendments is qualified by many exceptions expressed in the act. The most important is the preservation of the old navy pay when higher than the army pay.

One of the provisos of section 13 of the Personnel Act is the following:

"That no provision of this Act shall operate to reduce the present pay of any commissioned officer now in the Navy; and in any case in which the pay of such an officer would otherwise be reduced he shall continue to receive pay according to existing law."

The naval appropriation act of the next year, June 7, 1900 (31 Stat. L. 697), contains the following amplification of this proviso:

"Section thirteen of the Act approved March 3, 1899, entitled 'An Act to reorganize and increase the efficiency of the personnel of the Navy and Marine Corps of the United States,' is hereby so amended as to provide that nothing therein contained shall operate to reduce the pay which, but for the passage of said act, would have been received by any commissioned officer at the time of its passage or thereafter."

In the light of these provisions, it must be said that the general legislative principle is that, when at sea, the naval officer is never to have less pay than he had before the Personnel Act, but may have more.

This appellant, then a captain in the Navy, was entitled to $4,500 annual pay at sea (Rev. Stat., section 1556) under the old navy law. By the Personnel Act he became entitled to army pay at the same rate (Rev. Stat. sections 1261, 1262, 1267). If he lost his navy ration, the net result of the Personnel Act to him when at sea was a loss of $109.50 a year. In all cases where the old navy pay was equal to or greater than the army pay, if the navy ration is repealed, the Personnel Act would reduce the total compensation of an officer at sea $109.50.

The grant of the Personnel Act and its amendment was of an increase in pay where the pay was below the army pay, but a reduction where it was above the army pay was solicitously avoided. It is true that the sea ration is an allowance and not pay, but when all this care was taken to preserve the full pay, is it probable that Congress intended that the total compensation of an officer at sea should as the result of the Personnel Act be reduced to the extent of $109.50 a year?

Sea Service More Meritorious.

Sea service, whether under section 1556, or the act of March 3, 1899, is rated as more meritorious than shore duty by the grant of a higher rate of pay (*Rodgers* v. *United States*, 185 U. S. 83, 92). The Personnel Act has granted to officers of the Navy shore allowances which they never had before. This results in officers on shore receiving more, and never less, than they did before the passage of the act. If the court below is right officers are now to receive less at sea by losing the sea ration.

Thus the net result of the Personnel Act would be to grant higher compensation in all cases to officers for their duty ashore, but in many cases to give them less for sea service. Certainly no one would ascribe to Congress an intelligent purpose to do this, and it should not be held that this result has been accomplished unless the terms of the act make it necessary. We have seen that, under the recognized rules of interpretation, no such conclusion need be reached.

Conclusion.

We are standing upon settled principles of statutory construction in insisting that the grant made by the act of March 3, 1899, is not a repeal of grants made by previous acts not necessarily inconsistent.

The judgment should be reversed and the cause remanded to the court below with directions to award to the appellant the full retired pay of a rear-admiral corresponding to that of a major-general in the Army and commutation of ration when at sea during the time of his active service.

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Attorneys for Appellant.

In the Supreme Court of the United States.

OCTOBER TERM, 1903.

WILLIAM C. GIBSON, APPELLANT,
v.
THE UNITED STATES. } No. 195.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This cause was heard in the Court of Claims of the United States January 19, 1903, and the court made the following findings of fact:

I. The claimant, William C. Gibson, was duly appointed a captain in the Navy, to rank from February 18, 1900. While serving in that grade, then being an officer of the Navy, with a creditable record, who served during the civil war, he was retired by the following order:

"NAVY DEPARTMENT,
"*Washington, June 30, 1900.*

"SIR: On July 23, 1900, you will regard yourself transferred to the retired list of

officers of the U. S. Navy, in accordance with the provisions of section 1444 of the Revised Statutes, and with the rank and three-fourths of the sea pay of the next higher grade, *i. e.*, rear-admiral, in accordance with the provisions of section 11 of the naval personnel act, approved March 3, 1899.

"Respectfully,

"JOHN D. LONG,

"*Secretary.*

"Captain William C. Gibson, U. S. Navy, commanding U. S. S. *Texas*."

II. Since his retirement he has received pay at the rate of four thousand one hundred and twenty-five dollars ($4,125) a year, being three-fourths of five thousand five hundred dollars ($5,500), the pay fixed by section 1261 of the Revised Statutes of the United States as that of a brigadier-general in the Army.

If paid at the rate fixed by said section 1261 for a major-general in the Army, he would receive pay at the rate of three-fourths of seven thousand five hundred dollars a year, being five thousand six hundred and twenty-five dollars ($5,625) a year, a difference over and above what he has been receiving of one thousand five hundred dollars ($1,500) a year.

III. From January 22, 1900, to July 3, 1900, inclusive, claimant was, by regular assignment, in command of the U. S. S. *Texas*, a seagoing vessel in commission. During that period he was, prior to the 18th of February, a commander in receipt of pay

at the rate of four thousand dollars ($4,000) a year, and from and after that date, a captain receiving pay at the rate of four thousand five hundred dollars ($4,500) a year. He did not, while so attached to and in command of said vessel, receive any sea ration or commutation therefor, under Revised Statutes, sections 1578 and 1585 (reply of Navy Department, not printed).

The commutation therefor at the rate of thirty cents per day would amount to forty-eight dollars and ninety cents ($48.90).

(Record, pp. 3 and 4.)

From the foregoing findings of fact the court below decided as a conclusion of law that the petition should be dismissed, and judgment was entered on said 19th day of January, 1903, in favor of the defendants and dismissing the petition. (See record, pp. 12 and 13.) From the judgment so entered the claimant appeals to this court, and for assignment of errors states:

1. The court erred in holding that the claimant, as a rear-admiral of the Navy on the retired list, is entitled only to the retired pay of a brigadier-general in the Army, whereas said court should have held that he is entitled to the retired pay of a major-general in the Army, corresponding in rank to a rear-admiral in the Navy.

2. The court erred in holding that the claimant was not entitled to one ration, or commutation therefor, while at sea or attached to a sea-going vessel, whereas said court should have held that by virtue of the

provisions of sections 1578 and 1585 of the Revised Statutes he was entitled to thirty cents a day as the commuted value of a daily ration.

(See claimant's brief, p. 3.)

THE ISSUES.

The first question presented is whether a captain in the Navy, when retired as a rear-admiral under the provisions of section 1444, Revised Statutes, and section 11 of the navy personnel act, shall receive three-fourths of the pay of a rear-admiral in the first nine, or nine higher numbers, of the list of rear-admirals, or shall receive three-fourths the pay of a rear-admiral in the second nine, or nine lower numbers, of the eighteen rear-admirals; or, in view of the provisions of the navy personnel act, the question may be stated as follows: Whether the claimant is entitled to three-fourths the pay of a major-general or three-fourths the pay of a brigadier-general.

The second question for the court to pass upon is, Did the court below commit error in holding the claimant not entitled to one ration or commutation therefor while at sea or attached to a sea-going vessel; or, in other words, did the so-called "navy personnel act," passed March 3, 1899, repeal sections 1578 and 1585 of the Revised Statutes?

ARGUMENT.

The importance of this case is evidenced by the fact that this officer sues for the sum of $1,500 per year in addition to the amount he has heretofore

been receiving as retired rear-admiral, and if his contention is correct all rear-admirals retired under similar provisions are entitled to pay upon the basis contended for by claimant; and such pay will affect all rear-admirals now retired and hereafter retired under section 11 of the navy personnel act. The question of sea ration concerns every officer in the Navy who performs sea service.

Section 13 of said act provides in part as follows:

> That after June thirtieth, eighteen hundred and ninety-nine, commissioned officers of the line of the Navy and of the Medical and Pay Corps shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the Army. (See 30 Stat. L., p. 1007.)

Section 7 of said act provides for the active list of the line of the Navy and thereby created positions for twelve new rear-admirals, thus increasing the number of rear-admirals from six to eighteen, and omitted the rank of commodore from the active list. Therefore in promotion the gradation is from captain to rear-admirals. It may be pertinent to here state that the register of the Navy for January, 1903, contains the names of twenty-four rear-admirals on the active list, six of which number are placed on said list of rear-admirals and carried thereon as "additional in grade." Said rear-admirals carried as "additional in grade" are such rear-admirals as have been advanced by

reason of "eminent and conspicuous conduct in battle, or extraordinary heroism," as provided by section 1506, Revised Statutes.

The first proviso of said section 7 of the navy personnel act provides in part as follows:

> *Provided*, That each rear-admiral embraced in the nine lower numbers of that grade shall receive the same pay and allowance as are now allowed a brigadier-general in the Army.
>
> (See 30 Stat. L., p. 1005.)

Section 11 of said act reads as follows:

> That any officer of the Navy, with a creditable record, who served during the civil war, shall, when retired, be retired with the rank and three-fourths the sea pay of the next higher grade.
>
> (See 30 Stat. L., p. 1007.)

Section 1444 of the Revised Statutes reads as follows:

> When any officer below the rank of vice-admiral is sixty-two years old, he shall, except in the case provided in the next section, be retired by the President from active service.

By reference to section 8 of the navy personnel act (30 Stat. L., p. 1006) it will be seen that provision is made for voluntary retirement of officers, and provides that they may be retired upon the rank and pay of the next higher grade, and the section retains the rank of commodore on the *retired* list for the purpose of fixing rank and pay of

officers voluntarily retired, as provided in said section 8.

Section 9 of the navy personnel act provides for involuntary retirement of officers, and also retains the rank of commodore on the retired list for the purposes of fixing rank and pay. Thus it will be seen that the rank of commodore has not been absolutely and entirely abolished by the operations of section 7 of the act, but that the rank is retained in both sections 8 and 9 of the navy personnel act for the purposes of fixing rank and pay of officers voluntarily or involuntarily retired.

Section 1466, Revised Statutes, provides as follows:

> The relative rank between officers of the Navy, whether on the active or retired list, and officers of the Army, shall be as follows, lineal rank only being considered:
>
> The vice-admiral shall rank with the lieutenant-general.
>
> Rear-admirals with major-generals.
>
> Commodores with brigadier-generals.
>
> Captains with colonels.
>
> Commanders with lieutenant-colonels.
>
> Lieutenant-commanders with majors.
>
> Lieutenants with captains.
>
> Masters with first lieutenants.
>
> Ensigns with second lieutenants.

Section 1261, Revised Statutes, establishes the pay of officers of the Army as follows:

> The officers of the Army shall be entitled to the pay herein stated after their respective designations:

The general, thirteen thousand five hundred dollars a year.

Lieutenant-general, eleven thousand dollars a year.

Major-general, seven thousand five hundred dollars a year.

Brigadier-general, five thousand five hundred dollars a year.

Colonel, three thousand five hundred dollars a year.

* * * * *

The Comptroller of the Treasury has passed upon the question presented in this case, and his opinion is as follows:

> An officer of the Navy with the rank of captain, retired under the provisions of section 11 of the navy personnel act of March 3, 1899, which provides that an officer with a creditable record and who has served in the civil war shall, when retired, be retired with the rank and three-fourths the sea pay of the next higher grade, is entitled, on retirement after March 3, 1899, to three-fourths the sea pay of a rear-admiral of the nine lower numbers, or three-fourths the pay then received by a brigadier-general of the Army. (See Decisions of the Comptroller, Vol. V, p. 750.)

Also in passing upon a similar question the Comptroller says:

> If retired as in the grade of captain he would be entitled to only the retired pay of the junior grade of rear-admirals, which is the next grade for pay above that of captain, but

> if returned as though in the junior grade of rear-admiral or as commodore, he would be entitled to the retired pay of senior officer in that grade, or an admiral above the nine lower numbers. (See Decisions of the Comptroller, Vol. V, p. 822.)

Again, in volume 7, Decisions of the Comptroller of the Treasury (p. 164), the Comptroller says:

> The navy personnel act abolished the grade of commodore and practically constituted a new grade for pay purposes within the grade of rear-admiral, known as the nine lower numbers of that grade, and into this subgrade the commodores were advanced.

Claimant's counsel contend that there is no special provision in section 7 of the navy personnel act for the pay of any other rear-admirals than those embraced in the nine lower numbers of that grade; and further contend that the grade of rear-admiral, according to said section 7, is a single grade. But it must be remembered that this is a question of *pay*, not of *grade* or *rank*. The claimant has the advantage of being retired as a rear-admiral, with all the influence, dignity, respect, and deference shown to that high office, a distinction that captains, when retired upon voluntary or involuntary application under sections 8 and 9 of the navy personnel act, do not enjoy. Congress, by general law, has conferred this distinction upon claimant. But we are not dealing with rank or grade in this case. When a captain in the Navy

is retired with the rank and three-fourths the sea pay of the next higher grade, as provided in said section 11, Congress undoubtedly fixed that next higher *grade* for the purposes of pay by the first proviso of said section 7. The court will make no exception in this case, but will endeavor to ascertain the will and intention of the law-making power. All construction and interpretation of statutes is to the end that the intention of the legislature may be understood and enforced.

> But an interpretation of a statute which must lead to consequences which are mischievous and absurd is inadmissible if the statute is susceptible of another interpretation by which such consequences can be avoided. For this purpose all parts of the statute are to be read and compared. (See Sutherland on Statutory Construction, sec. 238.)

Again:

> The question for the courts is, what did the legislature really intend to direct, and this intention must be sought in the whole of the act taken together and other acts in *pari materia*. (Same author, p. 316.)

In seeking to give the proper construction and interpretation to the statutes under consideration, we do not think a stronger argument can be presented in behalf of defendant's contention than the language used by Judge Peelle when construing section 7 in his opinion in the case of *Frederick Rodgers* v. *The United States*, which opinion has

been sustained by this court. The learned judge says:

> So that for the purposes of pay a distinction is created by the act in the grade of rear-admirals and special provision made therefor. (36 C. Cls. R., p. 275.)

In the opinion forming the decision of the court below in the Rodgers case Mr. Justice Brewer, speaking for this court, says:

> The individuals thus raised in rank were not so raised on account of distinguished services or for any personal reason, but simply in consequence of the abolition of the official rank they had held. Is it unreasonable to believe that Congress thought it unwise to give to those officers (who had neither by length of service or by personal distinction become entitled to the position of rear-admiral, as it had stood in the past) all the benefits of such position? Would it be unnatural for Congress to bear in mind those who by length of service or by personal distinction had already earned the position, and provide that in, at least, the matter of pay there should be some recognition of the fact? Again, is it unreasonable to believe that Congress intended that those officers whose past services placed them according to the prior relative rank side by side with brigadier-generals of the Army, should not, by a mere change of statute, be given a benefit in salary which was not at the same time accorded to brigadier-generals in the Army? May not this explain

> its action in so dividing the rear-admirals into two classes—one composed substantially of former rear-admirals, equal both in rank and pay with major-generals in the Army, and the other of those who in the past were only commodores, to whom was given the rank of rear-admirals but the pay of brigadier-generals in the Army?
>
> (See 185 Supreme Court Rep., p. 91.)

If we apply the foregoing reasoning to the case at bar it would seem improbable that Congress intended to place upon retired pay at the rate of three-fourths of $7,500 per year, an officer who, but five months and five days previous to his retirement was below the rank of captain in the Navy.

Again, if claimant's contention is correct, he, as a retired officer, with no duties or responsibilities to perform other than to draw his salary, would be entitled to receive, as such retired rear-admiral, the sum of $5,625 per annum, while the rear-admiral on the active list in the nine lower numbers, charged with all the grave responsibilities incident to active service, receives but $5,500 per year. Certainly such was not the will and intention of Congress.

Counsel devotes considerable space in their able brief seeking to emphasize claimant's faithful services. (See claimant's brief pp. 25 to 27.) The claimant was appointed a captain only five months and five days before he was promoted and

retired as rear-admiral. He was not raised in rank to rear-admiral on account of distinguished service, or for any personal reason. However creditable his service may have been, there is nothing in the record that emphasizes and distinguishes this service as "eminent and conspicuous conduct in battle or extraordinary heroism" beyond others who have been promoted and retired in the due process of law.

Counsel insist that there is no difference in grade between one rear-admiral and another. If the terms "grade" and "rank" are synonymous, and especially are to be treated as exact synonyms, then claimant's counsel are probably correct. We frankly admit that for all purposes, except pay purposes, there is no difference in the rank between one rear-admiral and another, but we again call the attention of the court to the fact that this case has nothing whatever to do with the rank of the claimant. Defendant having conferred upon claimant the dignity and distinguished rank of rear-admiral does not now seek to deprive him of any of the honors or dignity therewith conferred. Congress said, in said section 11, that claimant should be retired with the *rank* and three-fourths the sea pay of the next higher *grade*. If the law-making power did not recognize any difference for the purposes of pay between rank and grade why say anything about three-fourths pay of next higher *grade?* Why should the statute have been

clothed in language that would raise any question in the mind of the interpreter as to the meaning between grade and rank? Congress could as easily have expressed itself by saying that the officer should be retired with the next higher *rank* and three-fourths the sea pay of that rank; but evidently it did not, in said section, consider *rank* and *grade* as synonymous. The learned judge of the court below who delivered the opinion governing this case presents in the strongest terms the reasoning of the court in arriving at its conclusion of law, and we here quote a part of said opinion in order that the court may have the same in convenient form:

> It is contended that this definition of the relative rank between the officers of the Army and Navy tends to strengthen the claims of the plaintiff.
>
> The decision settles the rank of the claimant, but that does not settle the question in issue in the case.
>
> It is said in that connection that there is no exception in the terms of the law which justifies the claimant being placed on the lower basis of pay, but in reply to that it may be said that there is no provision of the law placing him on the higher basis, the pay of an admiral.
>
> The statute has made a distinction in pay of the admirals on the active list by a classification by numbers, and upon that classification has based the emoluments of the rank, and when the claimant is placed in the

rank he confronts two conditions which may from the pay be called the higher and lower number.

It is ably argued by the counsel in the case of Gibson, No. 22864, and in this case, that there is no room for construction of the act upon which the claimants' right is based; that the words of the law are plain and unambiguous, and therefore it is the duty of the court to enforce the statute by the application of its terms and language. Many authorities are cited to sustain the theory that where the words are plain and unambiguous there is no room for construction or interpretation, and therefore the simple duty of the court is to apply the law as by its terms it has been enacted by the legislature. It is said in substance that section 11 does not provide that a captain who has served during the civil war upon retiring with the rank of a rear-admiral shall receive less than the rank of a rear-admiral, and that the classification of higher or lower numbers is intended for the active list of the Navy, and has no application to the claimant, he being on the retired list; that if it had been the intention of Congress that the claimant was to receive the pay of a brigadier-general, it would have been so provided in the statute, and that in the absence of any such provision the statute must be interpreted, not from conditions existing in the retired list, but from the words of the law. In support of the theory that where the real meaning of the statute is plain and there is no room for

ambiguity, it is the duty of the court to enforce it according to its very language.

Our attention has been cited to the cases of *Lake County* v. *The United States* (130 U. S., 662, 663); *United States* v. *Tyler* (105 U. S., 244); *Thornley* v. *The United States* (173 U. S., 310); *Queen* v. *Poor Law Commission* (6 Adolph and Ellis, 66); *County Seat of Linn County* (15 Kansas, 501), and other cases, establishing the well-settled doctrine that statutes are to be applied and not construed when no doubt arises from the words and provisions of the law. We have carefully examined the cases relied on by counsel in both cases; but do not find that they settle the controversy arising upon the words and terms of the various statutes in relation to the subject-matter of this proceeding, as contended by claimants.

In the construction of the thirteenth section of the personnel act, and the section of said act which makes a distinction in the pay of rear-admirals dependent upon their grade in numbers, we are dealing with a condition arising from the proviso making such distinctions, and must deal with that condition in the most reasonable way in determining the will of the legislature. The two sections taken together require construction and interpretation, and we are not confined to the application of the mere words of the statute. Where the words are plain and unambiguous, the duty of the court is to apply the plain words of the statute; but when the subject-matter of

the law is somewhat variable, then it is the duty of the court to so interpret or apply the words of the law as is most reasonable and just to such conditions, and thereby effectuate the intent of the legislature. Upon the transfer of the claimant to the retired list of the Navy, by operation of law he succeeded to the next highest rank as a rear-admiral, it is true, but in that rank we find a classification as to pay; that classification has a higher and lower grade of pay, one half receiving the sum of $7,500 and the other half the sum of $5,500. The question in this case is not a question of rank but of pay, and the next highest pay to a captain (the rank of commodore being abolished by the personnel act) is that of an admiral in the lower number of the list of admirals.

As has been said, this is a question of pay and not of rank in the active list of the Navy, and we find a classification of admirals as to pay, the higher numbers receiving the larger pay and the lower numbers the smaller pay. The intent of the personnel act, as shown by the words of the statute, was to promote the claimant to the corresponding rank in the Army, but the rank in the Navy corresponding to the rank in the Army has two grades of pay, depending on the number which is held by the respective officers, thereby establishing a variety in the condition of pay. Promotion, unless otherwise ordered, is by regular

gradation, and each step is presumed to be taken, unless otherwise provided. Applying that rule to the case of the claimant, his first step, being promotion of pay, would be into that grade having a lower rate of pay, and not into the grade having the right of higher pay.

The main object of the act of March 3, 1899, in dealing with the rights of the claimant was promotion for the purpose of pay, and not of rank; and the qualifications on that promotion "with rank and three-fourths sea pay of the next higher grade, i. e., rear-admiral," as stated in the order, following the substance of the statute, must mean the pay of a brigadier-general, that pay corresponding with the pay of the nine lower numbers on the active list.

Pay and not rank being the paramount purpose of the law, we must regard the grades of pay which we find incident to the active list of the Navy, and at the threshold of those grades looking at and for the "next higher" we find as the lowest grade of pay the pay of a brigadier-general, and keeping in view the idea of it being a question of pay we must adopt as the "next higher" the lower grade of pay.

(See Record, pp. 6 to 8, inclusive.)

That Congress created two grades for the purposes of pay in the list of rear-admirals is clearly set forth by the decision of the court in the Rodgers case, and in the opinion of the court below in the Lowe case, a copy of which is contained in

the record, and it has been further clearly determined by these decisions that the next higher grade to which captains of the Navy are entitled to promotion for the purposes of pay, when retired under section 1444 of the Revised Statutes and section 11 of the navy personnel act, is the grade known as the nine lower numbers, or the second nine of the list of rear-admirals.

For the foregoing reasons we think that on the first question presented to the court the opinion of the court below should be affirmed.

SEA RATION.

On the second assignment of error claimant's attorneys contend that sections 1578 and 1585 of the Revised Statues are not repealed by section 13 of the navy personnel act, said sections reading as follows:

> SEC. 1578. All officers shall be entitled to one ration, or to commutation therefor, while at sea or attached to a seagoing vessel.
>
> SEC. 1585. Thirty cents shall in all cases be deemed the commutation price of the navy ration.

Section 13 of the navy personnel act (30 Stat. L., p. 1007) provides:

> SEC. 13. That after June thirtieth, eighteen hundred and ninety-nine, commissioned officers of the line of the Navy and of the Medical and Pay Corps shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance

of law for the officers of corresponding rank in the Army: *Provided*, That such officers when on shore shall receive the allowances, but fifteen per centum less pay than when on sea duty, but this provision shall not apply to warrant officers commissioned under section twelve of this act: *Provided further*, That when naval officers are detailed for shore duty beyond seas they shall receive the same pay and allowances as are or may be provided by or in pursuance of law for officers of the Army detailed for duty in similar places: *Provided further*, That naval chaplains, who do not possess relative rank, shall have the rank of lieutenant in the Navy, and that all officers, including warrant officers, who have been or may be appointed to the Navy from civil life shall, on the date of appointment, be credited, for computing their pay, with five years' service. And all provisions of law authorizing the distribution among captors of the whole or any portion of the proceeds of vessels, or any property hereafter captured, condemned as prize, or providing for the payment of bounty for the sinking or destruction of vessels of the enemy hereafter occurring in time of war, are hereby repealed: *And provided further*, That no provision of this act shall operate to reduce the present pay of any commissioned officer now in the Navy; and in any case in which the pay of any such an officer would otherwise be reduced he shall continue to receive pay according to existing law: *And provided fur-*

ther, That nothing in this act shall operate to increase or reduce the pay of any officer now on the retired list of the Navy.

It has been generally recognized by the accounting officers, the personnel of the Navy, and by the courts that the "navy personnel act," in so far as it relates to pay and allowances, was enacted for the purpose of equalizing the pay of officers of the Army and officers of the Navy of relative or corresponding rank. Congress recognized the inequality of pay and allowances, which in some instances was in favor of the army officer and in some cases in favor of the naval officer, and in order to effect an equal pay and allowance, in so far as practicable, and at the same time avoid the reduction of pay of any officer then in the Navy, Congress inserted the provisions concerning pay and allowances found in said section 13 of said navy personnel act.

It is conceded by claimant that sea ration is an allowance. (Claimant's brief, p. 38.) It is also conceded that army officers do not receive a ration. (Claimant's brief, p. 36.)

It will be seen by the fourth proviso of said section 13 that Congress carefully preserved the existing rates of pay to officers then in the Navy so that in no case could their pay be reduced, and whenever the old navy pay, as provided by section 1556 of the Revised Statutes, was *less* than the army pay upon which naval officers were placed by the operation of the statute, the officer receives the

advantage of the increased rate of pay provided by said section 13. It will be further observed that said fourth proviso in the section prohibits the reduction of *pay*, but does not prohibit the reduction of *allowances* to naval officers. It would seem, then, from the general terms and meaning of the statute, that those naval officers who at the time of the passage of the navy personnel act were receiving greater pay than they would receive under the navy personnel statute, but for the fourth proviso, should be continued upon the old navy pay, as provided in section 1556 of the Revised Statutes, and those naval officers who at the time of the passage of the navy personnel act were receiving less pay than was provided by the terms of said act, should at once enter upon the new schedule of pay provided by said section 13. By the terms of the act officers of the line of the Navy are to receive the same pay and allowances, except forage, as are or may be provided by and in pursuance of law for officers of corresponding rank in the Army. As we have stated, the fourth proviso prohibits the reduction of pay, but leaves the officer who receives greater pay under the old navy pay, as fixed by section 1556 of the Revised Statutes, in full enjoyment of *all the allowances*, except forage, as are provided for officers of corresponding rank in the Army, these allowances being in the nature of quarters, fuel, and mileage. In doing so we think Congress clearly intended to take

from the naval officer sea ration and give him allowances that the army officer enjoyed, and to which the naval officer was not entitled before the passage of the navy personnel act.

It must be conceded that sections 1578 and 1585 are not repealed in expressed direct terms by said section 13 of the navy personnel act, but we insist that a reasonable and correct interpretation of section 13 necessarily leads to the conclusion that said sections 1578 and 1585, Revised Statutes, are repealed by implication. We do not hesitate to at once acknowledge the full force and effect of the rule invoked by claimants' counsel that repeals by implication are not favored. Repeals by implication are recognized as intended by the lawmaking power, and the legislative intention to repeal is ascertained by construction and interpretation, just as the legislative intent is ascertained in other respects, when not declared in expressed and direct terms. And when two acts are repugnant, although they may not be so in expressed terms, yet if the last act covers the whole subject of the first act, it will operate by implication as a repeal of the first act. The whole subject embraced in sections 1578 and 1585, Revised Statutes, is the subject of allowances to naval officers. Section 13 of the navy personnel act certainly covers the question of allowances and embraces new provisions, these new provisions being the granting of army allowances to naval officers instead of the allow-

ances they formerly received. If Congress had not intended to effect the repeal, it certainly would have said so in some kind of terms that would not leave the matter doubtful. In granting army officers' allowances to naval officers Congress would have used the term "additional allowances to that now provided by law," instead of "the same allowances as are now provided by law for army officers."

But while we acknowledge the well-recognized and established rule, that repeals by implication are not favored, there is another rule of construction as well grounded and settled as the rule urged by claimant, and it is stated in the case of the *District of Columbia* v. *Hutton* (143 U. S., p. 18). On page 26 of the report cited Mr. Justice Lamar says:

> We are not unmindful of the rule that repeals by implication are not favored. But there is another rule of construction equally sound and well settled which we think applies to this case. Stated in the language of this court in *United States* v. *Tynen* (11 Wall., 88, 92), it is this: "When there are two acts on the same subject the rule is to give effect to both if possible. But if the two are repugnant in any of their provisions, the latter act, without any repealing clause, operates to the extent of the repugnancy as a repeal of the first; and even where two acts are not in express terms repugnant, yet if the latter act covers the

> whole subject of the first, and embraces new provisions, plainly showing that it was intended as a substitute for the first act, it will operate as a repeal of that act." (See also *Murdock* v. *Memphis*, 20 Wall., 590, 617; *Tracy* v. *Tuffly*, 134 U. S., 206, 223; *Fisk v. Honario*, 142 U. S., 459.)

Section 13 specifically provides that officers then in the Navy shall not be reduced in *pay*, but does not provide that they shall be protected in their *sea ration;* and had Congress intended to protect those officers in receiving sea ration, as provided in sections 1578 and 1585, Revised Statutes, why did not the legislators preserve the same caution in the express provision that they did on the question of pay? In placing naval officers upon the same pay and allowances as army officers, Congress equalized the allowances given each set of officers, and in doing so bestowed upon the naval officers much greater benefits and compensation in the way of allowances than they had formerly enjoyed; but to grant naval officers the same pay and allowances as army officers, and then to consider the statute to mean that the allowances thus granted to naval officers were to be an addition to those allowances they were receiving prior to the passage of the navy personnel act, would be to say that Congress sought and intended to discriminate in allowances between the two sets of officers and that its favor was bestowed in that discrimination upon the navy officers by permitting them to enjoy

a ration or commutation therefor which it did not grant to the army officers.

This construction would be out of harmony with the navy personnel act. Section 13 of the act covers the whole subject of pay and allowances. It was one of the chief objects and purposes, as we have seen, to equalize and harmonize the pay and allowances of officers of the Navy and Army in so far as practicable.

REPEAL BY REVISION.

> A revision is intended to take the place of the law as previously formulated. * * * The revision is a substitute; it displaces and repeals the former law as it stood relating to the subjects within its purview.
>
> In *Bartlett* v. *King*, Dewey, J., said: "A subsequent statute revising the whole subject-matter of a former, and evidently intended as a substitute for it, although it contains no express words to that effect, must, on principles of law, as well as in reason and common sense, operate to repeal the former." (See Sutherland on Statutory Construction, sec. 154, p. 207.)

Of the many authorities presented in support of the foregoing principles announced by the author, the case of *King* v. *Cornell* (106 U. S., 395), concerning the removal of causes to Federal courts, is particularly applicable to the case at bar, but the doctrine announced by the author is supported by a long list of authorities and is recognized by the

highest courts of the various States throughout the country. The author continues:

> Though a subsequent statute be not repugnant in all its provisions to a former, yet if it was clearly intended to prescribe the only rule which should govern, it repeals the former statute. (See foregoing section and page and the large list of authorities cited.)
>
> Does a revision import that it shall displace the last previous form; that it is evidently intended as a substitute for it; that it is intended to prescribe the only rule to govern? *In other words, will a revision repeal by implication previous statutes on the same subject, though there be no repugnance? The authorities seem to answer emphatically,* YES. The reasonable inference from a revision is that the legislature can not be supposed to have intended that there should be two distinct enactments embracing the same subject-matter in force at the same time, and that the new statute, being the most recent expression of the legislative will, must be deemed a substitute for previous enactments and the only one which is to be regarded as having the force of law. (See Sutherland on Statutory Construction, p. 208.)

Again—

> A revising statute embracing antecedent general laws on various subjects and reducing them to one system and one text repeals all prior statutes upon the same subjects not included in the body of the revision

and not exempted by an express clause. (See the author cited, sec. 155.)

It certainly seems that no more appropriate case could be presented for the operation of this doctrine than the one now before the court. Section 13 of the navy personnel act, in treating of the whole subject of pay and allowances of naval officers, sought to reduce the question to one system and one text, and therefore it repeals all prior statutes upon the question of pay and allowances to naval officers that are not exempted by an express clause. The fourth proviso of section 13 of the navy personnel act preserved section 1556, Revised Statutes, in so far as pay is concerned, to those officers, and those officers only, who were in the Navy at the time of the passage of the act, but it does not protect them in allowances in way of sea ration.

We do not hesitate to rest the question as to the repeal of sections 1578 and 1585, Revised Statutes, upon the general scope and meaning of the navy personnel act as viewed in the light of the well-known doctrines we have herein presented. The standard furnished by the authorities for the interpretation of the statute clearly demonstrates that it was the intention and purpose of Congress to take from naval officers sea ration when it gave them the greater benefit of quarters and fuel.

The opinion of the court below, on which the case at bar was decided, was rendered in the case

of *Charles M. Thomas* v. *The United States*, and is found on pages 9 to 12, inclusive, of the record. Without reproducing the opinion here, we respectfully refer the court to the same, and believe it to be a strong argument in favor of defendants' contention in this case and clearly interprets the statutes under consideration, and forcibly sets forth the intention and purpose of Congress found in said section 13 of the navy personnel act.

We respectfully ask that the judgment of the court below be affirmed.

LOUIS A. PRADT,
Assistant Attorney-General.
JOHN Q. THOMPSON,
Special Attorney.

O

Supreme Court of the United States.

No. 195.—October Term, 1903.

William C. Gibson, Appellant,
vs.
The United States.
} Appeal from the Court of Claims.

[April 25, 1904.]

This is an appeal from the Court of Claims. The claimant is a retired rear admiral. This action was prosecuted to recover the difference between three-fourths the pay of a brigadier general and that of a major general of the Army, accorded by statute to retired rear admirals. The Court of Claims dismissed the petition, holding the claimant entitled to three-fourths the pay of a brigadier general. Upon the hearing in that court the following facts were found:

"I. The claimant, William C. Gibson, was duly appointed a captain in the Navy, to rank from February 18, 1900. While serving in that grade, then being an officer of the Navy, with a creditable record, who served during the civil war, he was retired by the following order:

'Navy Department,
Washington, June 30, 1900.

'Sir: On June 23, 1900, you will regard yourself transferred to the retired list of officers of the U. S. Navy, in accordance with the provisions of section 1444 of the Revised Statutes, and with the rank and three-fourths of the sea pay of the next higher grade, *i. e.*, rear admiral, in accordance with the provisions of section 11 of the Naval Personnel Act, approved March 3, 1899.

Respectfully, John D. Long,
Secretary.

'Captain William C. Gibson, U. S. Navy, commanding U. S. S. Texas.'

"II. Since his retirement he has received pay at the rate of four thousand one hundred and twenty-five dollars ($4,125) a year, being three-fourths of five thousand five hundred dollars, ($5,500,) the pay fixed by section 1261 of the Revised Statutes of the United States as that of a brigadier general in the Army.

"If paid at the rate fixed by said section 1261 for a major general in the Army, he would receive pay at the rate of three-fourths of seven thousand five hundred dollars a year, being five thousand six hundred and twenty-five dollars ($5,625) a year, a difference of over and above what he has been receiving of one thousand five hundred dollars ($1,500) a year.

"III. From January 22, 1900, to July 3, 1900, inclusive, claimant was, by regular assignment, in command of the U. S. S. Texas, a seagoing

vessel in commission. During that period he was, prior to the 18th of February, a commander in receipt of pay at the rate of four thousand dollars ($4,000) a year, and from and after that date a captain, receiving pay at the rate of four thousand five hundred dollars ($4,500) a year. He did not, while so attached to and in command of said vessel, receive any sea ration or commutation therefor, under Revised Statutes, sections 1578 and 1585 (reply of Navy Department not printed).

"The commutation therefor at the rate of thirty cents per day would amount to forty-eight dollars and ninety cents ($48.90)."

Mr. Justice DAY delivered the opinion of the Court.

The first question presented is whether a captain in the Navy retired as a rear admiral, under section 1444 of the Revised Statutes of the United States and section 11 of the Navy Personnel Act, shall receive three-fourths of the pay of the rear admirals in the nine higher numbers in the list of rear admirals or the like proportion of the pay of the nine lower numbers of the eighteen rear admirals.

Section 1444 of the Revised Statutes provides: "When any officer below the rank of vice admiral is sixty-two years old he shall, except in cases provided in the next section, be retired by the President from active service."

Section 11 of the Navy Personnel Act reads: "That any officer of the Navy with a creditable record, who served during the civil war, shall, when retired, be retired with the rank and three-fourths the sea pay of the next higher grade." (30 Stat. 1007.)

Section 13 provides: "That after June thirtieth, eighteen hundred and ninety-nine, commission officers of the line of the Navy and of the medical and pay corps shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the Army."

In the first proviso of section 7 of said act, provision having been made for eighteen rear admirals in the active list of the line of the Navy, it is enacted as follows: "*Provided*, That each rear admiral embraced in the nine lower numbers of that grade shall receive the same pay and allowances as are now allowed a brigadier general in the Army." (30 Stat. 1005.)

The claimant at the time of his retirement was a captain in the United States Navy, who had served during the civil war, and was retired, by order of the Secretary of the Navy, pursuant to section 1444 of the Revised Statutes, with the rank and with three-quarters of the sea pay of the next higher grade, in accordance with section 11 of the Navy Personnel Act above quoted.

By section 1446 of the Revised Statutes of the United States it is provided:

"The relative rank between officers of the Navy, whether on the active or retired list, and officers of the Army shall be as follows, lineal rank only being considered:

"The vice admiral shall rank with the lieutenant general.
"Rear admirals with major generals.
"Commodores with brigadier generals.
"Captains with colonels.
"Commanders with lieutenant colonels.
"Lieutenant commanders with majors.
"Lieutenants with captains.
"Masters with first lieutenants.
"Ensigns with second lieutenants."

Section 1261 fixes the pay of the officers of the Army:

"The officers of the Army shall be entitled to the pay herein stated after their respective designations:

"The general: thirteen thousand five hundred dollars a year.
"Lieutenant general: eleven thousand dollars a year.
"Major general: seven thousand five hundred dollars a year.
"Brigadier general: five thousand five hundred dollars a year.
"Colonel: three thousand five hundred dollars a year."

The claim of the appellant is, in substance, that the pay of the next higher grade above captain, the three-quarters of which the appellant is to receive, is the full pay of a rear admiral, that of a major general, and not what is claimed to be the exceptional pay for the nine lower numbers of that grade who are to receive the pay and allowance of a brigadier general.

It is admitted in the discussion, that the provision fixing the pay of the nine rear admirals to correspond with the pay of a brigadier general arose from the fact that the relative rank of officers of the Army and Navy had been so adjusted by statute as to rank commodores with brigadier generals, and the rank of commodore being dropped from the service, the pay of a brigadier general was given to the nine lower numbers of the rear admirals, who would otherwise have had the rank of commodores with the corresponding pay of brigadier generals.

The argument for the appellant insists that the language is plain and so explicit as to need no construction; but the fact that the rear admirals are divided into two classes for the purposes of pay, and the statute not specifically pointing out which class of pay shall be given those situated as the claimant is, leads us to consider the objects to be attained by the new law, the circumstances under which it was enacted, and to construe the language used in view of the purpose of Congress in enacting the statute.

There is no question that, had the claimant been promoted in the active service from captain to rear admiral, he would have passed into the lower grade of rear admirals, so far at least as his pay was concerned, and would have received, so long as within that number, the pay of a brigadier gen-

eral, notwithstanding that for all other purposes he was entitled to the rank and privileges of a rear admiral.

The appellant was promoted, and almost immediately retired; when thus retired, having served during the civil war, he was given the rank of the next higher grade and three-fourths of the sea pay of that grade. Congress had already created for the purposes of pay a division in the rank or grade of rear admiral, with higher pay for those of higher number and lower pay for others in the rank. It seems to us that it was the object of Congress, when retiring an officer under the circumstances stated, that he should receive the pay of the next higher rank, and, but for the division made in the pay of rear admirals, he would receive the three-quarters of the full pay of that rank, but taking one step upward for the purpose of pay he passes into and not over the next pay grade, which is that of the nine lower numbers.

In regular gradation in the active service, a rear admiral, for the purposes of pay, must first serve through the nine lower numbers of the grade. So with a retiring officer; it is the purpose to give him, as compensation in the regular order of promotion, the pay of the "next higher grade." This conclusion is in harmony with the decision of this court in *Rogers* v. *United States*, in which Mr. Justice Brewer, speaking for the court, said of this statute:

"The individuals thus raised in rank were not so raised on account of distinguished services or for any personal reason, but simply in consequence of the abolition of the official rank they had held. Is it unreasonable to believe that Congress thought it unwise to give to those officers (who had neither by length of service or by personal distinction become entitled to the position of rear admiral, as it had stood in the past) all the benefits of such position? Would it be unnatural for Congress to bear in mind those who by length of service or by personal distinction had already earned the position, and provide that in, at least, the matter of pay there should be some recognition of the fact? Again, is it unreasonable to believe that Congress intended that those officers whose past services placed them according to the prior relative rank side by side with brigadier generals of the Army, should not, by a mere change of statute, be given a benefit in salary which was not at the same time accorded to brigadier generals in the Army? May not this explain its action in so dividing the rear admirals into two classes—one composed substantially of former rear admirals, equal both in rank and pay with major generals in the Army, and the other of those who in the past were only commodores, to whom was given the rank of rear admirals but the pay of brigadier generals in the Army?"

We cannot believe that it was the intention of Congress that an officer upon retirement, and whose promotion shortly before his retirement was made for the purpose of giving him an increase of pay as well as rank, was intended to be given the higher grade of pay reserved for those of distinction or long service in the grade to which the retiring officer was pro-

moted, leaving those in the active service who earned the right to promotion to receive the lower grade of pay. In short, we believe it was the intention of Congress to promote a retiring officer for the purposes of pay into the next grade above that in which he served before retirement. In this case such compensation was that provided for rear admirals of the lower grade. If this were not so, a retiring rear admiral would receive, under the circumstances now before us, more pay upon retirement than is given to the rear admirals in active service, in the lower pay grade. It is urged that the promotion and retirement of those who had rendered valuable service in the civil war was the object of Congress, which purpose is best subserved by construing the statute to give in case of such promotions the full rank and pay of the grade to which the officer is promoted. This reasoning may be adequate to furnish a motive for such legislation, but we can only give effect to purposes expressed or necessarily implied in the terms of the statute.

But, it is urged, that in sections 8 and 9 of the Navy Personnel Act, Congress, in providing for retirement of naval officers, has included the grade of commodores, and provides that captains within their terms shall be retired with three-fourths the pay of the next higher grade, "including the grade of commodore, which is retained on the retired list for this purpose," thus evincing the purpose of Congress to retain the rank and pay of commodores in express terms when such is the purpose. But this reservation is for officers retired under these sections who are not to rank above commodores, while officers who served in the civil war and are retired are to have the full rank of admirals with the pay of the lower grade of the rank.

We agree with the Comptroller of the Treasury and the Court of Claims in the construction to be given this statute. If the purpose of Congress has been mistaken the law can be corrected by a new enactment making clear the intention to give the more liberal treatment contended for by the appellant.

The question remains as to the right of this officer to receive commutation for the sea ration provided for by sections 1578 and 1585 of the Revised Statutes. These sections are:

"SEC. 1578. All officers shall be entitled to one ration, or to commutation therefor, while at sea or attached to a sea-going vessel.

"SEC. 1585. Thirty cents shall in all cases be deemed the commutation price of the navy ration."

The provision of section 13 of the Navy Personnel Act is:

"Officers of the Navy shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the Army." (30 Stat. 1007.)

The claim upon this branch of the case is that sections 1578 and 1585 are not repealed in express terms by section 13 of the Navy Personnel Act, and, as repeals by implication are not favored, it is argued that, notwithstanding the later law, the allowance for sea rations still remains for naval officers. But the later act distinctly provides that after June 30, 1899, commissioned officers of the line of the Navy and of the medical and pay corps shall receive the same compensation and allowance, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the Army. This section was intended to cover and in exact terms provides for all pay and allowance for naval officers except forage. Where it is the intention of the statute to make a distinction or exception in allowance, that exception is expressly stated. The subject matter of the later act provides for allowances to such officers, and it is to be the same as is now provided by law for Army officers of corresponding rank. Had Congress intended that such allowances as theretofore given should be continued, or to reserve the right to commutation as to the sea ration, it would have been very easy to have inserted apt words which would have rendered effectual this purpose. But the terms of the law undertaking to revise former laws upon the subject make no such reservation as is contended for, and we think we are not at liberty to add to the statute by inserting it.

It is true that repeals by implication are not favored, but where the same subject matter is covered by two acts which cannot be harmonized with a view to giving effect to the provisions of each, to the extent of the repugnancy between them the latter act will prevail, particularly in cases where it is apparent that the later act was intended as a substitute for the earlier one. (*District of Columbia* v. *Hutton*, 143 U. S. 18–26.)

It is admitted that a change in the compensation of naval officers was made by the enactment of the new law, and, while section 13 provided that such officers should not be reduced in pay, there is no provision retaining the allowances of the former act. Moreover, section 26 of the Navy Personnel Act provides that all acts and parts of acts, so far as they conflict with its provisions, shall be repealed. For the reasons stated we think the allowance of the previous statute cannot stand consistently with the express provision upon the same subject of the later act.

We find no error in the judgment of the Court of Claims, and the same is

Affirmed.

Mr. Justice BREWER took no part in the consideration or decision of this case.

Supreme Court of the United States.

No. 212.—October Term, 1903.

John Lowe, Appellant,
vs.
The United States.
} Appeal from the Court of Claims.

[April 25, 1904.]

Mr. Justice Day delivered the opinion of the Court.

This case involves the same question, upon identical facts, as to the pay of a retired rear admiral, just disposed of in the case of *Gibson* v. *United States, ante,*

For the reasons therein stated, the judgment of the Court of Claims, dismissing the petition of the appellant, is

Affirmed.

Mr. Justice Brewer took no part in the consideration or decision of this case.

True copy.

Test:

Clerk Supreme Court, U. S.